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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN - PROCEEDINGS IN
FAMILY COURT

Introduced By: Representatives Shanley, Shekarchi, Blazejewski, Solomon, and
Coughlin

Date Introduced: March 30, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 14-1-3, 14-1-6, 14-1-6.2, 14-1-7, 14-1-7.1, 14-1-7.2, 14-1-7.3, 14-
2 1-11, 14-1-25, 14-1-33, 14-1-36, 14-1-37, 14-1-40, 14-1-42 and 14-1-66 of the General Laws in
3 Chapter 14-1 entitled "Proceedings in Family Court" are hereby amended to read as follows:

4 **14-1-3. Definitions.**

5 The following words and phrases when used in this chapter shall, unless the context
6 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 §§ 14-1-5 and 14-1-6 if, after a hearing, the family court determines that probable cause
12 exists to believe that the offense charged has been committed and that the person charged has
13 committed the offense.

14 (2) "Appropriate person", as used in §§ 14-1-10 and 14-1-11, except in matters relating to
15 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;

1 (iii) Any director of public welfare of any city or town within this state, or his or her duly
2 authorized subordinate;

3 (iv) Any truant officer or other school official of any city or town within this state;

4 (v) Any duly authorized representative of any public or duly licensed private agency or
5 institution established for purposes similar to those specified in § 8-10-2 or 14-1-2; or

6 (vi) Any maternal or paternal grandparent, who alleges that the surviving parent, in those
7 cases in which one parent is deceased, is an unfit and improper person to have custody of any
8 child or children.

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

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

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

16 (6) "Dependent" means any child who requires the protection and assistance of the court
17 when his or her physical or mental health or welfare is harmed, or threatened with harm, due to
18 the inability of the parent or guardian, through no fault of the parent or guardian, to provide the
19 child with a minimum degree of care or proper supervision because of:

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (vi) Who has, on any occasion, violated any of the laws of the state or of the United
7 States or any of the ordinances of cities and towns, other than ordinances relating to the operation
8 of motor vehicles; or

9 (vii) Any child under seventeen (17) years of age who is in possession of one ounce (1
10 oz.) or less of marijuana, as defined in § 21-28-1.02, and who is not exempted from the penalties
11 pursuant to chapter 28.6 of title 21.

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

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

18 (12) "Youth" means:

19 (i) A juvenile who has reached the age of sixteen (16) years, but has not reached the age
20 of eighteen (18) years of age at the time of the alleged offense; or

21 (ii) A juvenile who is subject to a waiver or certification hearing pursuant to §14-1-7 of
22 this chapter.

23 (13) "Youthful offender" means a youth who is charged with a crime for which they may
24 be waived or certified pursuant to §14-1-7 who has not previously been deemed delinquent or
25 been convicted of a felony in superior court or who has not been previously adjudged delinquent
26 in the family court of more than three (3) felonies.

27 **14-1-6. Retention of jurisdiction.**

28 (a) When the court shall have obtained jurisdiction over any child prior to the child
29 having attained the age of eighteen (18) years by the filing of a petition alleging that the child is
30 wayward or delinquent pursuant to § 14-1-5, the child shall, except as specifically provided in
31 this chapter, continue under the jurisdiction of the court until he or she becomes nineteen (19)
32 years of age, unless discharged prior to turning nineteen (19). When the court shall have obtained
33 jurisdiction over any child prior to the child's eighteenth (18th) birthday by the filing of a
34 miscellaneous petition or a petition alleging that the child is dependent, neglected, and abused

1 pursuant to §§ 14-1-5 and 40-11-7 or 42-72-14, including any child under the jurisdiction of the
2 family court on petitions filed and/or pending before the court prior to July 1, 2007, the child
3 shall, except as specifically provided in this chapter, continue under the jurisdiction of the court
4 until he or she becomes eighteen (18) years of age; provided, that at least six (6) months prior to a
5 child turning eighteen (18) years of age, the court shall require the department of children, youth
6 and families to provide a description of the transition services including the child's housing,
7 health insurance, education and/or employment plan, available mentors and continuing support
8 services, including workforce supports and employment services afforded the child in placement
9 or a detailed explanation as to the reason those services were not offered. The details of a child's
10 transition plan shall be developed in consultation with the child, wherever possible, and approved
11 by the court prior to the dismissal of an abuse, neglect, dependency, or miscellaneous petition
12 before the child's twenty-first birthday.

13 (b) The court may retain jurisdiction of any child who is seriously emotionally disturbed
14 or developmentally delayed pursuant to § 42-72-5(b)(24)(v) until that child turns age twenty-one
15 (21) when the court shall have obtained jurisdiction over any child prior to the child's eighteenth
16 birthday by the filing of a miscellaneous petition or a petition alleging that the child is dependent,
17 neglected and or abused pursuant to §§ 14-1-5, and 40-11-7, or 42-72-14.

18 (c) The department of children, youth and families shall work collaboratively with the
19 department of behavioral healthcare, developmental disabilities and hospitals, and other agencies,
20 in accordance with § 14-1-59, to provide the family court with a transition plan for those
21 individuals who come under the court's jurisdiction pursuant to a petition alleging that the child is
22 dependent, neglected, and/or abused and who are seriously emotionally disturbed or
23 developmentally delayed pursuant to § 42-72-5(b)(24)(v). This plan shall be a joint plan
24 presented to the court by the department of children, youth and families and the department of
25 behavioral healthcare, developmental disabilities and hospitals. The plan shall include the
26 behavioral healthcare, developmental disabilities and hospitals' community or residential service
27 level, health insurance option, education plan, available mentors, continuing support services,
28 workforce supports and employment services, and the plan shall be provided to the court at least
29 twelve (12) months prior to discharge. At least three (3) months prior to discharge, the plan shall
30 identify the specific placement for the child, if a residential placement is needed. The court shall
31 monitor the transition plan. In the instance where the department of behavioral healthcare,
32 developmental disabilities and hospitals has not made timely referrals to appropriate placements
33 and services, the department of children, youth and families may initiate referrals.

34 (d) The parent and/or guardian and/or guardian ad litem of a child who is seriously

1 emotionally disturbed or developmentally delayed pursuant to § 42-72-5(b)(24)(v), and who is
2 before the court pursuant to §§ 14-1-5(1)(iii) through 14-1-5(1)(v), 40-11-7 or 42-72-14, shall be
3 entitled to a transition hearing, as needed, when the child reaches the age of twenty (20) if no
4 appropriate transition plan has been submitted to the court by the department of children, person
5 and families and the department of behavioral healthcare, developmental disabilities and
6 hospitals. The family court shall require that the department of behavioral healthcare,
7 developmental disabilities, and hospitals shall immediately identify a liaison to work with the
8 department of children, youth, and families until the child reaches the age of twenty-one (21) and
9 an immediate transition plan be submitted if the following facts are found:

10 (1) No suitable transition plan has been presented to the court addressing the levels of
11 service appropriate to meet the needs of the child as identified by the department of behavioral
12 healthcare, developmental disabilities and hospitals; or

13 (2) No suitable housing options, health insurance, educational plan, available mentors,
14 continuing support services, workforce supports, and employment services have been identified
15 for the child.

16 (e) Provided, further, that any youth who comes within the jurisdiction of the court by the
17 filing of a wayward or delinquent petition based upon an offense that was committed prior to July
18 1, 2007, including youth who are adjudicated and committed to the Rhode Island training school
19 and who are placed in a temporary community placement as authorized by the family court, may
20 continue under the jurisdiction of the court until he or she turns twenty one (21) years of age.

21 (f) In any case where the court shall not have acquired jurisdiction over any person prior
22 to the person's eighteenth (18th) birthday by the filing of a petition alleging that the person had
23 committed an offense, but a petition alleging that the person had committed an offense that would
24 be punishable as a felony if committed by an adult has been filed before that person attains the
25 age of ~~nineteen (19)~~ twenty (20) years of age, that person shall, except as specifically provided in
26 this chapter, be subject to the jurisdiction of the court until he or she becomes ~~nineteen (19)~~
27 twenty (20) years of age, unless discharged prior to turning ~~nineteen (19)~~ twenty (20).

28 (g) In any case where the court shall not have acquired jurisdiction over any person prior
29 to the person attaining the age of ~~nineteen (19)~~ twenty (20) years by the filing of a petition
30 alleging that the person had committed an offense prior to the person attaining the age of eighteen
31 (18) years which would be punishable as a felony if committed by an adult, that person shall be
32 referred to the court that had jurisdiction over the offense if it had been committed by an adult.
33 The court shall have jurisdiction to try that person for the offense committed prior to the person
34 attaining the age of eighteen (18) years and, upon conviction, may impose a sentence not

1 exceeding the maximum penalty provided for the conviction of that offense.

2 (h) In any case where the court has certified and adjudicated a child in accordance with
3 the provisions of §§ 14-1-7.2 and 14-1-7.3, the jurisdiction of the court shall encompass the
4 power and authority to sentence the child to a period in excess of the age of ~~nineteen (19)~~ twenty
5 (20) years. However, in no case shall the sentence be in excess of the maximum penalty provided
6 by statute for the conviction of the offense.

7 (i) Nothing in this section shall be construed to affect the jurisdiction of other courts over
8 offenses committed by any person after he or she reaches the age of eighteen (18) years.

9 **14-1-6.2. Sentencing.**

10 In any case in which the court shall have jurisdiction of a juvenile pursuant to this
11 chapter, the court shall consider placing the juvenile in the least restrictive appropriate facility or
12 program. Prior to sentencing any juvenile to the training school or to any sentence of
13 confinement, the court shall order that probation prepare a report detailing the youth's history,
14 including, but not limited to, whether there is a need for substance abuse counseling,
15 psychological or psychiatric counseling, anger management counseling and whether there has
16 been a sudden or dramatic change in behavior of the youth prior to the offense conduct. The court
17 shall consider all options available before sentencing any youth to confinement including
18 inpatient/residential counseling, community service in lieu of probation and other available legal
19 remedies that may suit the juvenile and be more beneficial than confinement.

20 **14-1-7. Waiver of jurisdiction or certification hearing.**

21 (a) If any ~~child~~ youth is charged with an offense which would be punishable by life
22 imprisonment if committed by an adult, that ~~child~~ youth, upon motion of the attorney general,
23 shall be brought before the court and the court shall conduct a waiver hearing pursuant to § 14-1-
24 7.1.

25 (b) Any ~~child sixteen (16) years of age or older~~ youth who is charged with an offense
26 which would constitute a felony if committed by an adult shall, if the youth has previously been
27 waived or certified pursuant to this chapter or if they have been adjudged delinquent of three (3)
28 prior felonies as a juvenile, upon motion of the attorney general, be brought before the court and
29 the court shall conduct a waiver hearing pursuant to § 14-1-7.1.

30 (c) Any child who is charged with an offense which would ~~constitute a felony if~~
31 ~~committed~~ be punishable by life if committed by an adult shall, upon motion of the attorney
32 general, be brought before the court and the court shall conduct a ~~certification hearing pursuant to~~
33 ~~§ 14-1-7.2~~ waiver hearing pursuant to §14-1-7.1. Any child subject to waiver who is convicted of
34 a capital offense and sentenced to a term of life, shall be eligible for parole after fifteen (15) years

1 imprisonment. Any child subject to a waiver and who is convicted of a capital offense and is
2 sentenced to a term of years shall be eligible for parole after serving one-third (1/3) of the
3 sentence but in no event, more than fifteen (15) years.

4 (d) Any motion for waiver or certification shall be filed with the court within thirty (30)
5 days of arraignment.

6 (e) In any hearing on a motion for waiver pursuant to § 14-1-7.1, the court may consider
7 whether or not the child may be alternatively certified pursuant to § 14-1-7.2.

8 **14-1-7.1. Waiver of jurisdiction -- Proof.**

9 (a) Upon a motion by the attorney general pursuant to § 14-1-7, the court shall conduct a
10 hearing at which it shall be the duty of the attorney general to produce evidence to enable the
11 court to determine:

12 (1) That probable cause exists to believe that the offense charged has been committed and
13 that the ~~child~~ youth charged has committed it, unless the proof has been elicited at a prior hearing
14 on detention of the juvenile and the findings have been made by the same justice of the family
15 court who is conducting the waiver proceeding. If newly discovered exculpatory evidence is
16 available at the probable cause hearing that was not available at the detention hearing, the court
17 shall consider it before making any determination as to whether the youth shall be waived; and

18 (2) That the ~~child's~~ youth's past history of offenses, history of treatment, or the heinous or
19 premeditated nature of the offense is such that the court finds that the interests of society or the
20 protection of the public necessitate the waiver of jurisdiction of the court over the child. In
21 considering the youth's history of treatment, the court shall permit the respondent youth by and
22 through counsel, to present testimony from the youth's psychologist, psychiatrist, counselor or
23 any other mental health care provider or medical provider that may offer relevant or mitigating
24 information for the court's consideration.

25 (b) If the court finds that subdivisions (a)(1) and (a)(2) of this section have been proven
26 by a preponderance of evidence, it may waive jurisdiction over the ~~child~~ youth and refer the ~~child~~
27 youth to the appropriate adult court to be tried for the offense as an adult.

28 (c) A waiver of jurisdiction over a ~~child~~ youth pursuant to this section shall constitute a
29 waiver of jurisdiction over that ~~child~~ youth for the offense upon which the motion is based ~~as well~~
30 ~~as for all pending and subsequent offenses of whatever nature;~~ and the child shall be referred to
31 the court which would have had jurisdiction if the offense had been committed by an adult. In the
32 event that the child is acquitted of the offense for which the waiver has been sought, the waiver
33 shall be vacated and all records associated with it, whether generated by the department of
34 attorney general, law enforcement, the court, probation or any other agency that participated in

1 [the investigation, trial or any hearing, shall be sealed pursuant to §§12-1-12 et seq.](#)

2 **14-1-7.2. Certification -- Proof.**

3 (a) Upon a motion by the attorney general pursuant to § 14-1-7, the court shall conduct a
4 hearing at which it shall be the duty of the attorney general to produce evidence to enable the
5 court to determine:

6 (1) Probable cause exists to believe that the offense charged has been committed and that
7 the ~~child~~ [youth](#) charged has committed it;

8 (2) The ~~child's~~ [youth's](#) past history of [prior certification or being deemed delinquent of at](#)
9 [least three \(3\) prior felony](#) offenses, history of treatment, or the heinous or premeditated nature of
10 the offense is such that the court finds that the interests of society or the protection of the public
11 necessitate the certification; and

12 (3) The jurisdiction of the court but for the exercise of certification is in all likelihood an
13 insufficient period of time in which to accomplish a rehabilitation of the ~~child~~ [youth](#).

14 (b) If the court finds that subdivisions (a)(1) -- (a)(3) of this section have been proven by
15 a preponderance of evidence, it shall certify the ~~child~~ [youth](#) pursuant to § 14-1-7.3.

16 (c) Any person sixteen (16) years of age or older who has been found delinquent for
17 having committed ~~two (2)~~ [three \(3\)](#) offenses after the age of sixteen (16), which would render that
18 person subject to ~~an indictment~~ [a life sentence](#) if he or she were an adult, shall be certified
19 pursuant to this section. Any findings for offenses which have occurred prior to April 11, 1990,
20 shall be considered in making a determination of eligibility for certification. Nothing in this
21 section shall be construed to prohibit a waiver of jurisdiction of any ~~child~~ [youth](#) pursuant to § 14-
22 1-7.1.

23 **14-1-7.3. Certification -- Effect.**

24 (a) Upon a finding by the court that the child is subject to certification pursuant to § 14-1-
25 7.2, the court shall afford the child a right to a jury trial, and upon conviction for the offense
26 charged, the court shall sentence the child in accordance with one of the following alternatives:

27 (1) Impose a sentence upon the child to the training school for youth until the time that
28 the child attains the age of nineteen (19) years;

29 (2) Impose a sentence upon the child for a period in excess of the child's nineteenth
30 birthday to the adult correctional institutions, with the period of the child's minority to be served
31 in the training school for youth in a facility to be designated by the court. However, the sentence
32 shall not exceed the maximum sentence provided for by statute for conviction of the offense.

33 (b) Any child who is certified shall not be eligible for release from the training school for
34 youth unless, after hearing, the certifying judge, or the chief judge in his or her absence, or his or

1 her designee, determines by clear and convincing evidence that the child will not pose a threat to
2 the public during the term of the release.

3 (c) In the event that the court has modified the order of certification pursuant to § 14-1-42
4 by suspending the balance of the sentence imposed, any violation of the terms of the suspended
5 sentence shall be referred to the appropriate adult court to be treated in accordance with the
6 regular procedure of the court, unless the person is under the age of eighteen (18) years at the
7 time of the violation, in which case, jurisdiction over the sentence shall continue in the family
8 court.

9 (d) In the event that the court, after a hearing on modification of the order of certification
10 pursuant to § 14-1-42, has determined that it has not been demonstrated by clear and convincing
11 evidence that the person has been sufficiently rehabilitated and could be released in the
12 community without posing a danger to the public should the order of certification be modified,
13 the court shall deny the modification of the order of certification and direct the person to serve the
14 balance of his or her sentence under the jurisdiction of the department of corrections in a facility
15 under the control of the department. The sentence, including any term served in the training
16 school for youth, shall be subject to the regulations and statutes governing the parole board.

17 (e) Any person who commits an offense which would be punishable as a felony if
18 committed by an adult, after having been certified and adjudicated by the family court pursuant to
19 § 14-1-7.2, may, after a hearing by a justice of the family court to determine that probable cause
20 exists to believe that the child has committed the offense, have the jurisdiction over his or her
21 sentence transferred to the department of corrections to be served in facilities under the control of
22 the department.

23 (f) A finding that the child is subject to certification shall constitute presumptive evidence
24 of the non-amenability of the person to further treatment in facilities available to the family court
25 and the court shall transfer the jurisdiction over his or her sentence to the department of
26 corrections to be served in facilities under the control of the department, unless the presumption is
27 rebutted by clear and convincing evidence which demonstrates that the person is amenable to
28 treatment in family court facilities.

29 (g) (1) A finding that the child is subject to certification shall also constitute presumptive
30 evidence of the non-amenability of the person to further treatment in facilities available to the
31 family court and the court shall waive jurisdiction over that offense and all subsequent offenses
32 and the child shall be prosecuted for the offense by the court which would have jurisdiction if
33 committed by an adult, unless the presumption is rebutted by clear and convincing evidence
34 which demonstrates that the person is amenable to treatment in family court facilities.

1 (2) A waiver of jurisdiction over a child pursuant to subdivision (1) of this subsection
2 shall constitute a waiver of jurisdiction over that child for that offense and for all subsequent
3 offenses of whatever nature, and the child shall be referred to the court which would have had
4 jurisdiction if the offense had been committed by an adult.

5 (h) The name of any person waived or certified and convicted shall be available to the
6 general public upon the youth's eighteenth birthday and only after all appeals and post-conviction
7 motions have been decided.

8 SECTION 2. Section 14-1-7.4 of the General Laws in Chapter 14-1 entitled "Proceedings
9 in Family Court" is hereby repealed.

10 ~~**14-1-7.4. Waiver or certification of juvenile drug offenders.**~~

11 ~~A child sixteen (16) years of age or older who has been found delinquent of having~~
12 ~~committed one felony offense after the age of sixteen (16) involving the unlawful sale,~~
13 ~~distribution, manufacture, delivery, or possession with intent to manufacture, sell, distribute, or~~
14 ~~deliver any controlled substance listed in Schedule I or II of § 21-28-2.08, shall be either certified~~
15 ~~pursuant to § 14-1-7.2 or waived pursuant to § 14-1-7.1 for all subsequent felony offenses~~
16 ~~involving the unlawful sale, distribution, manufacture, delivery, or possession with intent to~~
17 ~~manufacture, sell, distribute, or deliver any controlled substance.~~

18 **14-1-11. Authorizing and filing petition.**

19 (a) The filing of the petition constitutes assumption of jurisdiction over the child. Filing
20 shall take place upon authorization by the intake department upon completion of its procedures
21 pursuant to Rule 3 of the Rules of Juvenile Proceedings, upon authorization by a justice of the
22 family court pursuant to Rule 4 of the Rules of Juvenile Proceedings, or immediately upon
23 appearance of the child before the court following emergency detention, unless the court
24 otherwise orders.

25 (b) In the event that a petition is filed, any appropriate person having knowledge,
26 information, or belief of the material facts that appear to warrant a petition may be a petitioner
27 under this chapter and is not required to give recognizance or surety for costs. The petition shall
28 be directed to the family court of the state of Rhode Island, setting forth, that in the opinion of the
29 petitioner the child is a delinquent, wayward, dependent, or neglected child, or otherwise comes
30 within the provisions of this chapter, and requires the care and protection of the state, and all
31 petitions, with the exception of those requesting the arrest and/or detention of any person, shall be
32 sworn to before a licensed notary public. Those exceptions, as stated above, shall be sworn to by
33 either a justice or clerk of the family court.

34 (c) No child shall be ordered detained at the training school unless there is pending

1 against the child a petition setting forth facts that would constitute a felony ~~or misdemeanor~~ if
2 committed by an adult or that alleges a violation of a valid court order, or unless the child is
3 adjudged in contempt of court. Provided, the family court shall not detain a juvenile at the
4 training school for any status offense nor shall any juvenile be detained for the violation of a valid
5 court order, until a hearing is conducted and it is determined that the child intentionally violated
6 the order, and the violation involves the failure of the child to engage in services or activities
7 intended to protect or promote the child's health or safety, or the health or safety of any other
8 person or persons.

9 In the event a child is ordered to be detained at the training school, the family court shall
10 conduct a probable cause hearing within five (5) calendar days of the child's detention (exclusive
11 of weekends and/or holidays). At the conclusion of the probable cause hearing, the court shall
12 order the release of the child from the training school unless the court finds that the child poses a
13 substantial risk of harm to self or to others.

14 Nothing in this section prohibits the temporary commitment by the family court to the
15 department of children, youth and families for placement of a child in a specific facility or
16 program other than the training school for youth.

17 (d) The department of children, youth and families, in consultation with law enforcement
18 agencies, the attorney general, the office of the public defender, and the family court, shall
19 develop and implement a detention risk assessment instrument by no later than July 1, 2009.

20 (e) No child shall be placed in detention at the training school unless a determination is
21 made by the family court that the child poses a substantial risk of harm to self or to others.

22 (f) No petition alleging that a child is wayward by virtue of disobedient behavior may be
23 filed except upon proof offered in the petition that the child has been subjected to a needs
24 assessment conducted at a facility approved by the director of the department of children, youth
25 and families and that a treatment plan resulting from that assessment has been unsuccessful.

26 (g) The director of the department of children, youth and families is authorized and
27 directed to promulgate any rules and regulations that it deems necessary to implement the
28 provisions and purposes of this section.

29 **14-1-25. Arrest of juveniles without warrant.**

30 Any officer authorized to make an arrest for any criminal offense may take into custody
31 without a warrant any child believed to be delinquent or wayward within that officer's jurisdiction
32 provided that the arrest occurs within twelve (12) hours of the offense. ~~but in~~ In no case shall a
33 child be detained in custody longer than two (2) hours without being given the opportunity to call
34 or contact their parents, guardians, or counsel nor more than twenty-four (24) hours without being

1 referred to the family court for consideration.

2 **14-1-33. Supervision of child placed on probation.**

3 (a) Whenever the court places a child on probation, the court may do so upon any terms
4 and conditions, not inconsistent with law, that the court may deem best for the welfare of the
5 child, but unless otherwise ordered by the court, a probation counselor may make any
6 arrangements for the care of the child that he or she may deem best for its welfare, and may
7 release the child in the care of its parent, guardian, or other lawful custodian, or in the care of any
8 relative of the child. If a child has been placed on probation as provided in this chapter, the
9 probation counselor may, if the juvenile has been accused of committing a criminal offense, apply
10 to the court for an order mandating that the juvenile appear before the court ~~at any time before the~~
11 ~~discharge of the child take the child before the court without a warrant,~~ or the court may issue a
12 warrant to bring the child before the family court upon a finding of probable cause that the
13 juvenile has committed another criminal offense. When the child is before the court, the court
14 may make any disposition of the case which it might have made before the child was placed on
15 probation, or may continue or extend the period of probation.

16 (b) At the end of the probation period of a child, the probation counselor shall make a
17 report to the court, in writing, as to the conduct of the child during that period.

18 (c) If, at any time during a child's probationary term, the child is charged with an
19 additional and subsequent delinquency offense, which if committed by an adult would be
20 considered a felony, the probation counselor shall file a petition in the family court alleging that
21 the child has violated probation.

22 (d) If, at any time during a child's probationary term the child is charged with an
23 additional and subsequent wayward/disobedient or status offense, the probation counselor may
24 file a petition in the family court alleging that the child has violated probation.

25 **14-1-36. Commitment of delinquent and wayward children.**

26 (a) In all proceedings under this chapter, the court may order a delinquent or wayward
27 child to be committed to the training school for youth for a sentence no longer than the youth's
28 ~~nineteenth~~ twentieth birthday. However, nothing contained in this section shall be construed to
29 prohibit the placing of any child in the custody of the department of children, youth and families
30 or any other agency, society, or institution, pursuant to § 14-1-32. The commitment of delinquent
31 or wayward children shall be by an order and all assignments of the custody of dependent,
32 neglected, delinquent, or wayward children to the state training school for youth or to the custody
33 of the department of children, youth and families or to any of the private institutions, agencies, or
34 societies mentioned in this chapter shall be by a decree signed by the justice of the court by whom

1 the order or decree is issued, and that order or decree shall be directed to any person that the court
2 may designate, and shall require that person to take the child and deliver him or her to the officer
3 in charge of the training school for youth or to the custody of the director of children, youth and
4 families or of the public or private institution, agency, or society, and the order or decree shall
5 constitute the person charged with it, while he or she has the order in his or her possession for
6 service, an officer for all purposes under this chapter, in any county of the state in which it may
7 be necessary for him or her to go. The person charged with carrying out the order or decree shall
8 also deliver to the officer of the public or private institution, agency, or society or to the training
9 school for youth or the director of children, youth and families a copy of the order or the decree
10 signed by the justice of the court issuing it, and subject to the provisions of this chapter, the
11 officer and other authorities in charge of the training school for youth or the director of children,
12 youth and families or any public or private institution, agency, or society shall hold the child
13 according to the terms of any other order or decree that may from time to time thereafter be
14 issued by the court in relation to the child.

15 (b) Whenever the court shall commit a child to the training school for youth or to the
16 director of children, youth and families or any other institution or agency, it shall transmit with
17 the order of commitment a summary of its information concerning the child.

18 **14-1-37. Other disposition for best interests of child.**

19 The court may make any further disposition that it may deem to be for the best interests
20 of the child, except as otherwise provided in this chapter. If the court finds that the youth is a
21 youthful offender as defined in this chapter, the court shall before ordering incarceration at the
22 training school or other temporary placement institution, order probation to conduct an
23 investigation into the youth's background including, but not limited to, whether there is a need for
24 substance abuse counseling, psychological counseling, anger management counseling and
25 whether there has been a sudden dramatic change in behavior of the youth prior to the offense
26 conduct. The court shall if it finds such counseling or other counseling is necessary or beneficial,
27 shall not sentence the youth to a term of incarceration without ordering and providing at court
28 expense if the parents or guardians of the youth are without the financial ability to do so, the
29 appropriate counseling services. If the court finds that the youth has cooperated with counseling
30 and other orders of the court not inconsistent with this chapter, and finds that the youth has been
31 rehabilitated, it shall order the petition charging the youth with criminal offenses, dismissed.

32 **14-1-40. Adjudication not having effect of conviction.**

33 (a) No adjudication upon the status of any child in the jurisdiction of the court shall
34 operate to impose any of the civil disabilities ordinarily resulting from a conviction, nor shall any

1 child be deemed a criminal by reason of that adjudication, nor shall that adjudication be deemed a
2 conviction, nor shall any child be charged with or convicted of a crime in any court, except as
3 provided in this chapter. The disposition of a child or any evidence given in the court shall not be
4 admissible as evidence against the child in any case or proceeding in any other court, nor shall
5 that disposition or evidence operate to disqualify a child in any future civil service application,
6 examination, or appointment.

7 (b) Any finding of delinquency based upon acts which would constitute a ~~felony~~ [capital](#)
8 [offense](#), if committed by an adult, shall be available to the attorney general for use in its
9 recommendations to any court in sentencing and that record may be taken into consideration for
10 the purposes of sentencing.

11 [\(c\) Whenever any juvenile has had any petitions charging them with a criminal offense or](#)
12 [status offense dismissed or has been adjudicated a youthful offender and has successfully](#)
13 [completed the counseling, community service or other lawful orders of the court resulting in](#)
14 [dismissal of the petitions, all police and court records shall be automatically sealed consistent](#)
15 [with § 12-1-12 et seq.](#)

16 **14-1-42. Modification of order of commitment -- Release, detention, or**
17 **recommitment of child.**

18 (a) An order of commitment made by the court in the case of a child shall be subject to
19 modification or revocation from time to time.

20 (b) A parent, guardian, or next friend of a child or counsel for a child who has been
21 committed or assigned by the court to the custody of the department of children, youth and
22 families may at any time file with the court a verified petition, stating that the person or the
23 department has denied an application for the release of the child or has failed to act upon the
24 application within a reasonable time. If the court is of the opinion that an investigation should be
25 had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue.
26 If a petition is filed, it shall be the duty of the court to determine by clear and convincing
27 evidence that there has been a change of circumstances, and where the modification or revocation
28 of the order of commitment is in the best interest of the child and the public, the court may:

29 (1) Order that the child be restored to the custody of its parent or guardian or be detained
30 in the custody of the person or the department;

31 (2) Direct the person or the department to make any other arrangements for the child's
32 care and welfare that the circumstances of the case may require; or

33 (3) A further order of commitment.

34 (c) In any case where a child has been certified and adjudicated pursuant to §§ 14-1-7.2

1 and 14-1-7.3, and sentenced pursuant to § 14-1-7.3(a)(2), the court shall schedule a review of the
2 child's case thirty (30) days prior to the child's ~~eighteenth~~ twentieth birthday or thirty (30) days
3 prior to the one-year anniversary of the imposition of the sentence, whichever is greater. It shall
4 be the responsibility of the attorney general or of the law enforcement agency making the arrest to
5 notify the victim or victims of the crime for which the juvenile was certified and adjudicated of
6 the pendency of the hearing and afford them the opportunity to be heard. The court shall not hear
7 or determine any other motion for modification of the order of certification, except as provided
8 for in this section. At that time and upon proof by clear and convincing evidence that
9 demonstrates that the person has made sufficient efforts at rehabilitation and that the modification
10 of the order of certification would not pose a threat to the safety of the public, the court may
11 suspend, but shall not vacate, the balance of the sentence.

12 (d) In the event that the court, after a hearing, determines that it has not been
13 demonstrated by clear and convincing evidence that the person has made sufficient efforts at
14 rehabilitation and that the modification of the order of certification entered pursuant to § 14-1-
15 7.3(a)(2) would pose a threat to the safety of the public, the court shall order either:

16 (1) That the person be remanded to the training school for youth until further hearing to
17 be held no later than one year thereafter in accordance with subsection (c) of this section; or

18 (2) That the jurisdiction of the sentence be transferred to the department of corrections
19 and that the balance of the sentence be served in facilities under the control of the department.

20 (3) In any case where a child has been certified and adjudicated pursuant to § 14-1-
21 7.3(a)(2), upon motion by the attorney general and/or the department of children, youth and
22 families, the court shall conduct a hearing to consider modification of the order of certification if
23 the family court determines that the individual poses a serious threat to the safety of the public,
24 other residents at the training school and/or training school staff. Upon that finding the court may
25 order that the jurisdiction of the sentence be transferred to the department of corrections and that
26 the balance of the sentence be served in facilities under the control of the department.

27 **14-1-66. Application by victim to obtain name of juvenile.**

28 Upon written motion by the victim of a crime or his or her attorney, the family court may,
29 in its discretion, and upon good cause shown, divulge the name and address of the juvenile
30 accused of committing ~~the crime~~ a felony solely for the purpose of allowing the victim to
31 commence a civil action against the juvenile and/or his or her parents to recover for damages
32 sustained as a result of the crime; provided, that written notice of the motion shall be given to the
33 juvenile accused of committing the crime or his or her attorney, and further provided that the
34 court shall order that the name and address of the juvenile accused of committing the crime not be

1 divulged by the victim of a crime or his or her attorney to any other person unless and until the
2 civil action is commenced, without further order of the court.

3 SECTION 3. This act shall take effect upon passage.

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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 add definitions of youth and youthful offender for purposes of whether a
2 juvenile shall be waived or certified in the juvenile criminal justice system, would prohibit
3 certification of juveniles unless they have at least three (3) prior felony convictions. Would make
4 any juvenile fifteen (15) years of age or younger that is waived for a capital offense eligible for
5 parole after fifteen (15) years of a life sentence or one-third (1/3) of a term of years sentence but
6 in no event, no longer than fifteen (15) years. This act would also mandate that subsequent to a
7 waiver hearing, if additional exculpatory evidence is developed that was not available or known
8 at the hearing, that the court reconsider its waiver determination. In all cases of waiver, the court
9 shall consider the youth's history, need for counseling and other mitigating factors before
10 ordering waiver or certification. The court shall also consider the youth's history and need for
11 counseling in all case and in cases where the youth is a juvenile offender and if it finds that the
12 juvenile can benefit from counseling and other orders of the court that would help rehabilitate the
13 juvenile, the court shall not order the youth incarcerated but shall order appropriate treatment and
14 if the youth successfully completes the treatment, the court shall order the petitions dismissed. All
15 dismissed petitions shall be immediately and automatically sealed in accordance with chapter 12-
16 1-1. This act shall also permit the family court to retain jurisdiction over any juvenile up to their
17 twentieth birthday instead of transferring them to the adult correctional institutions upon reaching
18 eighteen (18) years of age. This act would prohibit the court from detaining juveniles for status
19 offenses, limit the ability of law enforcement to detain them without giving them an opportunity
20 to call their parents or guardians, would prevent probation from ordering a juvenile on probation
21 before the court without petitioning the court and would prohibit the court from automatically
22 waiving or certifying a juvenile for a subsequent charge of delivery of a controlled substance or
23 possession with the intent to deliver a controlled substance.

24 This act would take effect upon passage.

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