

2018 -- S 2683

LC005164

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO HUMAN SERVICES - ABUSED AND NEGLECTED CHILDREN

Introduced By: Senators McCaffrey, Goodwin, Lombardi, and Lynch Prata

Date Introduced: March 20, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 40-11-2 and 40-11-7.2 of the General Laws in Chapter 40-11
2 entitled "Abused and Neglected Children" are hereby amended to read as follows:

3 **40-11-2. Definitions.**

4 When used in this chapter and unless the specific context indicates otherwise:

5 (1) "Abused and/or neglected child" means a child whose physical or mental health or
6 welfare is harmed, or threatened with harm, when his or her parent or other person responsible for
7 his or her welfare:

8 (i) Inflicts, or allows to be inflicted, upon the child physical or mental injury, including
9 excessive corporal punishment; or

10 (ii) Creates, or allows to be created, a substantial risk of physical or mental injury to the
11 child, including excessive corporal punishment; or

12 (iii) Commits, or allows to be committed, against the child, an act of sexual abuse; or

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

15 (v) Fails to provide the child with a minimum degree of care or proper supervision or
16 guardianship because of his or her unwillingness or inability to do so by situations or conditions
17 such as, but not limited to: social problems, mental incompetency, or the use of a drug, drugs, or
18 alcohol to the extent that the parent or other person responsible for the child's welfare loses his or
19 her ability or is unwilling to properly care for the child; or

1 (vi) Abandons or deserts the child; or

2 (vii) Sexually exploits the child in that the person allows, permits, or encourages the child
3 to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled "Commercial
4 Sexual Activity"; or

5 (viii) Sexually exploits the child in that the person allows, permits, encourages, or
6 engages in the obscene or pornographic photographing, filming, or depiction of the child in a
7 setting that, taken as a whole, suggests to the average person that the child is about to engage in,
8 or has engaged in, any sexual act, or that depicts any such child under eighteen (18) years of age
9 performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

10 (ix) Commits, or allows to be committed, any sexual offense against the child as such
11 sexual offenses are defined by the provisions of chapter 37 of title 11, entitled "Sexual Assault",
12 as amended; or

13 (x) Commits, or allows to be committed, against any child an act involving sexual
14 penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen
15 (15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator
16 knows, or has reason to know, that the victim is a severely impaired person as defined by the
17 provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-1(6).

18 (2) "Child" means a person under the age of eighteen (18).

19 (3) "Child protective investigator" means an employee of the department charged with
20 responsibility for investigating complaints and/or referrals of child abuse and/or neglect and
21 institutional child abuse and/or neglect.

22 (4) "Children's advocacy center (CAC)" means a community-based organization that is a
23 member of the Rhode Island chapter of children advocacy centers and an accredited member (or
24 working toward accreditation) of the National Children's Alliance.

25 ~~(4)~~(5) "Department" means department of children, youth and families.

26 ~~(5)~~(6) "Educational program" means any public or private school, including boarding
27 schools, or any home-schooling program.

28 ~~(6)~~(7) "Health-care provider" means any provider of health care services involved in the
29 delivery or care of infants and/or care of children.

30 ~~(7)~~(8) "Institution" means any private or public hospital or other facility providing
31 medical and/or psychiatric diagnosis, treatment, and care.

32 ~~(8)~~(9) "Institutional child abuse and neglect" means situations of known or suspected
33 child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster
34 parent or the employee of a public or private residential child-care institution or agency; or any

1 staff person providing out-of-home care or situations where the suspected abuse or neglect occurs
2 as a result of the institution's practices, policies, or conditions.

3 ~~(9)~~(10) "Law-enforcement agency" means the police department in any city or town
4 and/or the state police.

5 ~~(10)~~(11) "Mental injury" includes a state of substantially diminished psychological or
6 intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability
7 to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior,
8 including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury
9 must be clearly attributable to the unwillingness or inability of the parent or other person
10 responsible for the child's welfare to exercise a minimum degree of care toward the child.

11 ~~(11)~~(12) "Person responsible for child's welfare" means the child's parent; guardian; any
12 individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian
13 and has unsupervised access to a child; foster parent; an employee of a public or private
14 residential home or facility; or any staff person providing out-of-home care (out-of-home care
15 means child day care to include family day care, group day care, and center-based day care).
16 Provided, further, that an individual, eighteen (18) years of age or older, who resides in the home
17 of a parent or guardian and has unsupervised access to the child, shall not have the right to
18 consent to the removal and examination of the child for the purposes of § 40-11-6.

19 ~~(12)~~(13) "Physician" means any licensed doctor of medicine, licensed osteopathic
20 physician, and any physician, intern, or resident of an institution as defined in subsection ~~(7)~~(8).

21 ~~(13)~~(14) "Probable cause" means facts and circumstances based upon as accurate and
22 reliable information as possible that would justify a reasonable person to suspect that a child is
23 abused or neglected. The facts and circumstances may include evidence of an injury, or injuries,
24 and the statements of a person worthy of belief, even if there is no present evidence of injury.

25 ~~(14)~~(15) "Shaken-baby syndrome" means a form of abusive head trauma, characterized
26 by a constellation of symptoms caused by other than accidental traumatic injury resulting from
27 the violent shaking of and/or impact upon an infant or young child's head.

28 **40-11-7.2. Evidence.**

29 (a) A videotape recording made by the department of children, youth, and families, a law
30 enforcement officer, ~~or~~ a hospital, or a children's advocacy center of an interview of or statement
31 made by a child who is the subject of an investigation conducted pursuant to § 40-11-7 is
32 admissible in any court proceeding pursuant to this chapter, notwithstanding any objection to
33 hearsay statements contained therein, provided it is relevant and material and provided its
34 probative value substantially outweighs the danger of unfair prejudice to the child's parent,

1 guardian, or other person responsible for the child's welfare. The circumstances of the making of
2 the videotape recording, including the maker's lack of personal knowledge, may be proved to
3 affect its weight.

4 (b) Prior to the videotaped recording being introduced into evidence the court shall first
5 determine that:

6 (1) The statement is sworn to under oath by the child and the significance of the oath is
7 explained to the child;

8 (2) The recording is both visual and aural and is recorded on film or videotaped or by
9 other electronic means;

10 (3) The recording equipment was capable of making an accurate recording, the operator
11 of the equipment was competent, and the recording is accurate and has not been altered;

12 (4) Every voice on the recording is identified;

13 (5) The statement was not made in response to questioning calculated to lead the child to
14 make a particular statement;

15 (6) The person conducting the interview of the child is available to testify at any court
16 proceeding pursuant to this chapter; and

17 (7) The child shall be available to testify at any court proceeding pursuant to this chapter.

18 SECTION 2. Chapter 40-11 of the General Laws entitled "Abused and Neglected
19 Children" is hereby amended by adding thereto the following section:

20 **40-11-18. Children's advocacy centers; services; requirements.**

21 (a) Children's advocacy centers provide the following services to children in Rhode
22 Island:

23 (1) Operation of a child-appropriate or child-friendly facility that provides a comfortable,
24 private setting that is both physically and psychologically safe for clients;

25 (2) Participation in a multidisciplinary team for response to child abuse allegations;

26 (3) Operation of a legal entity responsible for program and fiscal operations that has
27 established and implemented basic sound administrative practices;

28 (4) Promotion of policies, practices and procedures that are culturally competent and
29 diverse;

30 (5) Conduct forensic interviews in a manner which is of a neutral, fact-finding nature and
31 coordinated to avoid duplicative interviewing;

32 (6) Provide specialized medical evaluation and treatment made available to clients as part
33 of the team response, either at the CAC or through coordination and referral with other
34 specialized medical providers;

1 (7) Offer therapeutic intervention through specialized mental health services made
2 available as part of the team response, either at the child advocacy center or through coordination
3 and referral with other appropriate treatment providers;

4 (8) Offer victim support and advocacy as part of the team response, either at the child
5 advocacy center or through coordination with other providers, throughout the investigation and
6 subsequent legal proceedings;

7 (9) Conduct team discussions and provide information sharing regarding the
8 investigation, case status and services needed by the child and family are to occur on a routine
9 basis;

10 (10) Develop and implement a system for monitoring case progress and tracking case
11 outcomes for team components; and

12 (11) May establish a safe exchange location for children and families who have a
13 parenting agreement or an order providing for visitation or custody of the children that require a
14 safe exchange location.

15 (b) As used in this section, "cultural competency" means the capacity to function in more
16 than one culture, requiring the ability to appreciate, understand and interact with members of
17 diverse populations within the local community.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO HUMAN SERVICES - ABUSED AND NEGLECTED CHILDREN

1 This act would establish the Rhode Island chapter of the children's advocacy center, a
2 community based organization that would provide a child-friendly, safe and neutral location from
3 which a multidisciplinary team would act in response to child abuse allegations. The
4 organization would provide numerous victim support services such as, forensic interviews,
5 medical evaluation and treatment, intervention through specialized mental health services and
6 victim advocacy during legal proceedings.

7 This act would take effect upon passage.

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