

2020 -- S 2428

=====
LC004428
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————
A N A C T

RELATING TO HUMAN SERVICES -- ABUSED AND NEGLECTED CHILDREN

Introduced By: Senators Lynch Prata, Miller, DiPalma, and Goodwin

Date Introduced: February 13, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 40-11-7, 40-11-7.1 and 40-11-12 of the General Laws in Chapter
2 40-11 entitled "Abused and Neglected Children" are hereby amended to read as follows:

3 **40-11-7. Investigation of reports -- Petition for removal from custody -- Report to**
4 **child advocate -- Attorney general -- Court-appointed special advocate.**

5 (a) The department shall investigate reports of child abuse and neglect made under this
6 chapter in accordance with the rules the department has promulgated and in order to determine
7 the circumstances surrounding the alleged abuse or neglect and the cause thereof. The
8 investigation shall include personal contact with the child named in the report and any other
9 children in the same household. Any person required to investigate reports of child abuse and/or
10 neglect may question the subjects of those reports with or without the consent of the parent or
11 other person responsible for the child's welfare. The interviewing of the child or children, if they
12 are of the mental capacity to be interviewed, shall take place in the absence of the person or
13 persons responsible for the alleged neglect or abuse. In the event that any person required to
14 investigate child abuse and/or neglect is denied reasonable access to a child by the parents or
15 other person, and that person required to investigate deems that the best interests of the child so
16 require, they may request the intervention of a local law enforcement agency, or seek an
17 appropriate court order to examine and interview the child. The department shall provide such
18 social services and other services as are necessary to protect the child and preserve the family. [As](#)
19 [part of its investigation, the department shall determine the existence of and the fitness of](#)

1 immediate family members or next of kin of the child for placement of the child prior to
2 placement of the child into any foster care arrangement. The department shall devote at least two
3 (2) weeks to the task of identifying immediate family members or next of kin.

4 (b) In the event that after investigation it is determined by the department that the child is
5 being or has been abused or neglected but that the circumstances of the child's family or
6 otherwise do not require the removal of the child for his or her protection, the department may
7 allow the child to remain at home and provide the family and child with access to preventative
8 support and services. In addition, the department is authorized to petition the family court for an
9 order for the provision of treatment of the family and child.

10 (c) The department shall have the duty to petition the family court for removal of the
11 child from the care and custody of the parents, or any other person having custody or care of the
12 child if there is a determination that a child has been abused or neglected; which results in a child
13 death, serious physical or emotional harm, sexual abuse or exploitation or an act or failure to act
14 which represents an imminent risk of serious harm. In addition, in cases of alleged abuse and/or
15 neglect, the department may petition the family court for the removal of the alleged perpetrator of
16 that abuse, and/or neglect from the household of the child or children when the child or children
17 are eleven (11) years of age or older. It shall be the responsibility of the department to make the
18 parent or other person responsible for the child's welfare aware of the court action, the possible
19 consequences of the court action, and to explain the rights of the parent relative to the court
20 action.

21 (d) The department shall forward immediately any reports of institutional child abuse and
22 neglect to the child advocate who shall investigate the report in accordance with chapter 73 of
23 title 42, and also to any guardian ad litem and/or attorney of record for the child.

24 (e) In the event that after investigation the department takes any action regarding
25 placement of the child, the department shall immediately notify the child advocate of such action.

26 (f) In the event that after investigation the department has reasonable cause to know or
27 suspect that a child has been subjected to criminal abuse or neglect, the department shall forward
28 immediately any information as it relates to that knowledge or suspicion to the law enforcement
29 agency.

30 **40-11-7.1. Family court proceedings.**

31 (a) The family court shall, upon the filing of an ex parte petition, hereunder, immediately
32 take any action it deems necessary or appropriate for the protection of the child, or children,
33 suspected of being abused or neglected, including the removal of the child, or children, from the
34 custody of the parent or parents, or other person suspected of the abuse or neglect.

1 (b) A hearing on the petition shall be held within seven (7) days from the filing thereof,
2 for the court to:

3 (1) Advise the parent or parents or other person having care of the child of the allegations
4 contained in the petition;

5 (2) Enter either a denial or admission of the allegations contained in the petition;

6 (3) Assure that a guardian ad litem and/or a court appointed special advocate has been
7 appointed to represent the child;

8 (4) Appoint an attorney to represent the parent or parents or any other person having care
9 of the child alleged to have abused or neglected a child when the parent or custodian is unable to
10 afford representation, as determined by the court;

11 (5) Advise the parent or parents or any other person having care of the child of his or her
12 right to a probable cause hearing on the ex parte petition to be held as soon as practicable but no
13 later than ten (10) days from the date of the request;

14 (6) Make inquiry of the mother of the child to determine the identity of the biological
15 father of the child, if necessary;

16 (7) In the event that a person named as a putative father appears and denies that he is the
17 biological father of the child, the court shall direct that any such putative father execute a written
18 denial of paternity setting forth the implications of such denial in a form to be adopted by the
19 family court in accordance with the provisions of this section. Execution of such a document by
20 the putative father shall constitute prima facie evidence of his denial of paternity. Upon execution
21 of the denial of paternity form, the court shall find that the department has no duty to make
22 reasonable efforts to strengthen and encourage the relationship between the child and that
23 putative father and the lack of such efforts may not be cited for any purpose by the putative father
24 in any future proceeding conducted pursuant to the provisions of this chapter, the provisions of
25 title 15 chapter 7 or title 15 chapter 8;

26 (8) Make any interim orders in its discretion respecting the rights of the child: [including,](#)
27 [but not limited to, placement of the child in the care of immediate family members or next of kin](#)
28 [of the child pursuant to the findings of the department required by § 40-11-7.](#)

29 (c) The family court, upon identification of an alleged biological father by the mother of
30 the child, shall order service of the petition and notice of hearing date to be made upon him in
31 accordance with the Rules of Juvenile Proceedings.

32 (1) If an alleged putative father appears at the hearing or appears at any subsequent
33 hearing and denies paternity, the court shall direct that any such putative father execute a written
34 denial of paternity setting forth the implications of such denial in a form to be adopted by the

1 family court in accordance with the provisions of this section. Execution of such a document by
2 the putative father shall constitute prima facie evidence of his denial of paternity. Upon execution
3 of the denial of paternity form, the court shall make a finding that the department has no duty to
4 make reasonable efforts to strengthen and encourage the relationship between the child and that
5 putative father and the lack of such efforts may not be cited for any purpose by the putative father
6 in any future proceeding conducted pursuant to the provisions of this chapter, the provisions of
7 title 15 chapter 7 or the provisions of title 15 chapter 8.

8 (2) If an alleged putative father appears and neither admits nor denies paternity, the
9 department of children, youth, and families shall, within five (5) days, refer the putative father to
10 the department of human services for a determination of paternity in accordance with title 15
11 chapter 8.

12 (3) If a putative father, having been duly served with notice, fails to appear, the court
13 shall find that the department has no duty to make reasonable efforts to strengthen and encourage
14 the relationship between the child and the putative father and the lack of such efforts may not be
15 cited for any purpose in any future proceedings conducted pursuant to the provisions of this
16 chapter, the provisions of title 15 chapter 7 or the provisions of title 15 chapter 8.

17 (d) Execution of a written denial of paternity pursuant to this chapter shall have no legal
18 effect on paternity or child support proceedings commenced under title 15 chapter 8.

19 (e) At the probable cause hearing credible hearsay evidence may, in the discretion of the
20 court, be admissible. The petition may submit a signed physician's report which, while not
21 conclusive, shall constitute prima facie evidence to support continued detention of the child
22 pursuant to the ex parte order pending a trial on the merits.

23 **40-11-12. Award of custody.**

24 (a) If the court shall find that a child is abused or neglected within the meaning of this
25 chapter, the court shall by decree duly enter process as follows.

26 (b)(1) Place the child under the supervision of the department in his or her own home if
27 the court makes a determination that the child will be safely maintained in the home or award the
28 care, custody, and control of the child to the department upon such terms as the court shall
29 determine. The court may place the custody of the child in the department until such time as it
30 finds that the child may be returned to the parents or other person previously having custody or
31 care of the child under circumstances consistent with the child's safety; including, but not limited
32 to, placement of the child in the care of immediate family members or next of kin of the child
33 pursuant to the findings of the department required by § 40-11-7.

34 (2) In the event that placement of the child in the care of immediate family members or

1 next of kin of the child is deemed inappropriate, placement with families of the child's ethnic,
2 cultural or racial heritage shall receive preference.

3 (c) The court may require the parent or person previously having custody to undertake a
4 program of counseling, including psychiatric evaluation and/or treatment as a prerequisite to the
5 return of the child to his or her custody.

6 (d) When a child has been placed in the care, custody and control of the department
7 pursuant to the provisions of this chapter or of chapter 1 of title 14, the court shall have the power
8 to appoint a guardian of the person of the child.

9 (e) No petition for guardianship shall be granted unless it contains the written consent of
10 the parent or parents previously having custody of the child and of the department of children,
11 youth, and families.

12 (f) The entry of a decree of guardianship pursuant to this section shall terminate the
13 award of custody to the department and the involvement of the department with the child and the
14 child's parents. The court may revoke a guardianship awarded pursuant to this section if the court
15 finds, after a hearing on a motion for revocation, that continuation of said guardianship is not in
16 the best interests of the child.

17 (g) Notice of any hearing on such motion shall be provided by the moving party to the
18 department of children, youth, and families, the court appointed special advocate, the parent or
19 guardian and any and all other interested parties.

20 SECTION 2. Section 14-1-27 of the General Laws in Chapter 14-1 entitled "Proceedings
21 in Family Court" is hereby amended to read as follows:

22 **14-1-27. Temporary detention in public or private institutions.**

23 (a) Subject to § 14-1-11, provision may be made by the family court for the temporary
24 detention of children at the training school for youth or in the custody of the director of the
25 department of children, youth and families. The court may authorize the temporary placement of
26 children in private homes licensed and approved by the department of children, youth and
27 families and subject to the supervision of the court, or may arrange with any incorporated
28 institution or agency licensed for child care, to receive for temporary care children ordered
29 detained by the court. Unless good cause is shown to delay the commencement of the
30 adjudicatory hearing, if a child is in detention, the family court shall commence the adjudicatory
31 hearing within thirty (30) calendar days from whichever of the following events occurs latest: the
32 date the petition is served on the child; or the date the child is placed in detention. In all such
33 cases, the family court shall conclude the adjudicatory hearing within fifteen (15) calendar days
34 of the commencement of the hearing unless good cause is shown to extend an adjudicatory

1 hearing beyond fifteen (15) calendar days.

2 (b) In any case wherein the attorney general files an application to waive and/or certify a
3 youth, the juvenile may be detained at the training school for a period not to exceed ninety (90)
4 days. In such cases, the department shall present to the family court a waiver report within forty-
5 five (45) calendar days. At the expiration of ninety (90) days, the attorney general's petition for
6 waiver and/or certification shall be decided by the family court, unless good cause is shown to
7 extend the time upon which the family court may render such a decision.

8 (c) When DCYF makes application to the court to take a child into temporary custody
9 due to allegations of abuse and/or neglect or dependency, DCYF shall have the duty to investigate
10 the possibility of placing the child or children with a fit and willing relative not residing with the
11 parents. DCYF shall conduct an assessment into the appropriateness of placement of the child or
12 children with the relative within thirty (30) days of the child's placement in the temporary custody
13 of DCYF. If the department determines that the relative is a fit and proper person to have
14 placement of the child, the child shall be placed with that relative, unless the particular needs of
15 the child make the placement contrary to the child's best interests. All placements with relatives
16 shall be subject to criminal records checks in accordance with § 14-1-34, foster care regulations
17 promulgated by DCYF, and interstate compact approval, if necessary.

18 (d) If DCYF proposes to place the child with a relative outside the state of Rhode Island,
19 DCYF shall notify the parent who shall have an opportunity to file an objection to the placement
20 with the family court within ten (10) days of receipt of the notice. A hearing shall be held before
21 the child is placed outside the state of Rhode Island.

22 (e) If the request of a relative for placement of a child or children is denied by DCYF,
23 that relative shall have the right to petition the court for review. The court shall within five (5)
24 days of the request conduct a hearing as to the suitability of temporary placement with the relative
25 and shall make any orders incident to placement that it deems meet and just.

26 (f)(1) Whenever the court determines that permanent placement or adoption is in the best
27 interest of a child, a fit and willing relative who has been awarded placement of the child shall be
28 given priority over a non-relative, provided that the placement or adoption is in the best interest
29 of the child.

30 (2) Whenever the court determines that the best interest of the child requires that
31 permanent placement be awarded to a non-relative, placement with families of the child's ethnic,
32 cultural or racial heritage shall receive preference.

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

=====
LC004428
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO HUMAN SERVICES -- ABUSED AND NEGLECTED CHILDREN

1 This act would require the department of children, youth and families (DCYF) and the
2 family court to initially consider the placement of a child under their care with the child's
3 immediate family members or next of kin before placement in foster care. In the event that
4 immediate family care is not appropriate, placement with a family of the child's ethnic, culture or
5 racial heritage shall receive preference.

6 This act would take effect upon passage.

=====
LC004428
=====