

2022 -- H 7707

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HUMAN SERVICES -- ABUSED AND NEGLECTED CHILDREN

Introduced By: Representatives Williams, Vella-Wilkinson, Giraldo, Morales, and Felix

Date Introduced: March 02, 2022

Referred To: House 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 -- Children's advocacy**  
5 **center.**

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

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

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

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

22 (d) The department shall forward immediately any reports of institutional child abuse and  
23 neglect to the child advocate who shall investigate the report in accordance with chapter 73 of title  
24 42, and also to any guardian ad litem and/or attorney of record for the child.

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

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

31 **40-11-7.1. Family court proceedings.**

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

1 custody of the parent, or parents, or other person suspected of the abuse or neglect.

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

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

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

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

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

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

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

17 (7) In the event that a person named as a putative father appears and denies that he is the  
18 biological father of the child, the court shall direct that any such putative father execute a written  
19 denial of paternity setting forth the implications of the denial in a form to be adopted by the family  
20 court in accordance with the provisions of this section. Execution of the document by the putative  
21 father shall constitute prima facie evidence of his denial of paternity. Upon execution of the denial  
22 of paternity form, the court shall find that the department has no duty to make reasonable efforts to  
23 strengthen and encourage the relationship between the child and that putative father and the lack of  
24 such efforts may not be cited for any purpose by the putative father in any future proceeding  
25 conducted pursuant to the provisions of this chapter, the provisions of chapter 7 of title 15 or chapter  
26 8 of title 15;

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

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

33 (1) If an alleged putative father appears at the hearing or appears at any subsequent hearing  
34 and denies paternity, the court shall direct that any such putative father execute a written denial of

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

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

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

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

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

24 **40-11-12. Award of custody.**

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

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

1           (2) In the event that placement of the child in the care of immediate family members or  
2 next of kin of the child is deemed inappropriate, placement with families of the child's ethnic,  
3 cultural or racial heritage shall receive preference.

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

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

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

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

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

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

23           **14-1-27. Temporary detention in public or private institutions.**

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

1 unless good cause is shown to extend an adjudicatory 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 due  
9 to allegations of abuse and/or neglect or dependency, DCYF shall have the duty to investigate the  
10 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 placement  
14 of the child, the child shall be placed with that relative, unless the particular needs of the child make  
15 the placement contrary to the child's best interests. All placements with relatives shall be subject to  
16 criminal records checks in accordance with § 14-1-34, foster care regulations promulgated by  
17 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, that  
23 relative shall have the right to petition the court for review. The court shall within five (5) days of  
24 the request conduct a hearing as to the suitability of temporary placement with the relative and shall  
25 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 of  
29 the child.

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

1 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 HUMAN SERVICES -- ABUSED AND NEGLECTED CHILDREN

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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 immediate  
3 family members or next of kin before placement in foster care. In the event that immediate family  
4 care is not appropriate, placement with a family of the child's ethnic, culture or racial heritage shall  
5 receive preference.

6           This act would take effect upon passage.

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