

2022 -- S 2639

LC005259

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO DOMESTIC RELATIONS -- ADOPTION OF CHILDREN

Introduced By: Senators Kallman, Archambault, DiMario, DiPalma, Cano, Miller,
Acosta, Coyne, Quezada, and Zurier

Date Introduced: March 10, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 15-7-7 of the General Laws in Chapter 15-7 entitled "Adoption of
2 Children" is hereby amended to read as follows:

3 **15-7-7. Termination of parental rights.**

4 (a) The court shall, upon a petition duly filed by a governmental child placement agency
5 or licensed child placement agency, or by the birthmother or guardian of a child born under
6 circumstances referenced in subsection (a)(2)(viii) of this section, after notice to the parent and a
7 hearing on the petition, terminate any and all legal rights of the parent to the child, including the
8 right to notice of any subsequent adoption proceedings involving the child, if the court finds as a
9 fact by clear and convincing evidence that:

10 (1) The parent has willfully neglected to provide proper care and maintenance for the child
11 for a period of at least one year where financially able to do so. In determining whether the parent
12 has willfully neglected to provide proper care and maintenance for the child, the court may
13 disregard contributions to support that are of an infrequent and insubstantial nature; or

14 (2) The parent is unfit by reason of conduct or conditions seriously detrimental to the child;
15 such as, but not limited to, the following:

16 (i) Institutionalization of the parent, including imprisonment, for a duration as to render it
17 improbable for the parent to care for the child for an extended period of time;

18 (ii) Conduct toward any child of a cruel or abusive nature;

19 (iii) The child has been placed in the legal custody or care of the department of children,

1 youth and families and the parent has a chronic substance abuse problem and the parent's prognosis
2 indicates that the child will not be able to return to the custody of the parent within a reasonable
3 period of time, considering the child's age and the need for a permanent home. The fact that a parent
4 has been unable to provide care for a child for a period of twelve (12) months due to substance
5 abuse shall constitute prima facie evidence of a chronic substance abuse problem;

6 (iv) The child has been placed with the department of children, youth and families and the
7 court has previously involuntarily terminated parental rights to another child of the parent and the
8 parent continues to lack the ability or willingness to respond to services that would rehabilitate the
9 parent and provided further that the court finds it is improbable that an additional period of services
10 would result in reunification within a reasonable period of time considering the child's age and the
11 need for a permanent home;

12 (v) The parent has subjected the child to aggravated circumstances, which circumstances
13 shall be abandonment, torture, chronic abuse, and sexual abuse;

14 (vi) The parent has committed murder or voluntary manslaughter on another of his or her
15 children or has committed a felony assault resulting in serious bodily injury on that child or another
16 of his or her children or has aided or abetted, attempted, conspired, or solicited to commit such a
17 murder or voluntary manslaughter;

18 (vii) The parent has exhibited behavior or conduct that is seriously detrimental to the child,
19 for a duration as to render it improbable for the parent to care for the child for an extended period
20 of time; or

21 (viii) The parent has been convicted of sexual assault upon the birthmother and parenthood
22 is a result of that sexual assault, which shall be established by proving that the child was conceived
23 as a result of a conviction for any offense set forth in § 11-37-2, § 11-37-6, or § 11-37-8.1.
24 Conception as a result of sexual assault may be proved by DNA tests and upon conviction of the
25 putative father, and after a fact-finding hearing establishing paternity, the father's parental rights
26 shall be terminated by order of the court. Termination of the parental rights of the father shall
27 include the loss of all parental rights without limitation, including the adoption of the child. The
28 father shall also have no right to any visitation with the minor child and shall have no right to any
29 inheritance from a child conceived as a result of sexual assault as specified;

30 (3) The child has been placed in the legal custody or care of the department of children,
31 youth and families for at least twelve (12) months, and the parents were offered or received services
32 to correct the situation that led to the child being placed; provided, that there is not a substantial
33 probability that the child will be able to return safely to the parents' care within a reasonable period
34 of time considering the child's age and the need for a permanent home; or

1 (4) The parent has abandoned or deserted the child. A lack of communication or contact
2 with the child for at least a six-month (6) period shall constitute prima facie evidence of
3 abandonment or desertion. In the event that parents of an infant have had no contact or
4 communication with the infant for a period of six (6) months the department shall file a petition
5 pursuant to this section and the family court shall conduct expedited hearings on the petition.

6 (b)(1) In the event that the petition is filed pursuant to subsection (a)(1), (a)(2)(i), (a)(2)(iii),
7 or (a)(2)(vii) of this section, the court shall find as a fact that, prior to the granting of the petition,
8 such parental conduct or conditions must have occurred or existed notwithstanding the reasonable
9 efforts that shall be made by the agency prior to the filing of the petition to encourage and strengthen
10 the parental relationship so that the child can safely return to the family. In the event that a petition
11 is filed pursuant to subsection (a)(2)(ii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), or (a)(4) of this section, the
12 department has no obligation to engage in reasonable efforts to preserve and reunify a family.

13 (2) Any duty or obligation on the part of a licensed or governmental child placing agency
14 to make reasonable efforts to strengthen the parental relationship shall cease upon the filing of a
15 petition under this section. This provision shall not be construed and is not intended to limit or
16 affect in any way the parents' right to see or visit with the child during the pendency of a petition
17 under this section.

18 (3) Upon the filing of a termination of parental rights petition, the agency has an affirmative
19 duty to identify, recruit, process, and approve a qualified family for adoption or other permanent
20 living arrangement for the child.

21 (c)(1) In considering the termination of rights as pursuant to subsection (a), the court shall
22 give primary consideration to the physical, psychological, mental, and intellectual needs of the
23 child insofar as that consideration is not inconsistent with other provisions of this chapter. Upon an
24 agency filing a petition for termination of parental rights, the court shall order, consistent with §§
25 42-72-11 and 42-72-15, that any child who is the subject of the petition be provided a mental health
26 referral based on the individual needs of the child within forty-eight (48) hours of the child's
27 removal from their home or the filing of the petition, whichever occurs first.

28 (2) The consideration shall include the following: If a child has been placed in foster family
29 care, voluntarily or involuntarily, the court shall determine whether the child has been integrated
30 into the foster family to the extent that the child's familial identity is with the foster family and
31 whether the foster family is able and willing to permanently integrate the child into the foster
32 family; provided, that in considering integrating into a foster family, the court should consider:

33 (i) The length of time the child has lived in a stable, satisfactory environment and the
34 desirability of maintaining that environment and continuity for the child; and

1 (ii) The reasonable preference of the child, if the court determines that the child has
2 sufficient capacity to express a reasonable preference.

3 (d) If the court finds that the parental rights of the parent should be terminated as specified
4 in subsection (a), it shall by decree duly entered, appoint some suitable person to give or withhold
5 consent in any subsequent adoption proceedings. In the case of petitions filed by licensed or
6 governmental child placement agencies, the court shall appoint the agency to be the sole party to
7 give or withhold consent to the adoption of the child and further vest the agency with all rights of
8 guardianship over the child.

9 (e) Nothing in this section shall be construed to prohibit the introduction of expert
10 testimony with respect to any illness, medical or psychological condition, trauma, incompetency,
11 addiction to drugs, or alcoholism of any parent who has exhibited behavior or conduct that is
12 seriously detrimental to a child, to assist the court in evaluating the reason for the conduct or its
13 probable duration.

14 (f) The record of the testimony of the parties adduced in any proceeding terminating
15 parental rights to a child shall be entitled to the confidentiality provided for in § 8-10-21 and more
16 specifically shall not be admissible in any civil, criminal, or other proceeding in any court against
17 a person named a defendant or respondent for any purpose, except in subsequent proceedings
18 involving the same child or proceedings involving the same respondent.

19 (g) In the event any child, the parental rights to whom have been finally terminated, has
20 not been placed by the agency in the home of a person or persons with the intention of adopting the
21 child within thirty (30) days from the date of the final termination decree, the family court shall
22 review the status of the child and the agency shall file a report that documents the steps the agency
23 is taking to find an adoptive family or other permanent living arrangement for the child, to place
24 the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned
25 permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum,
26 this documentation shall include child specific recruitment efforts, such as the use of state, regional,
27 and national adoption exchanges, including electronic exchange system.

28 SECTION 2. Sections 42-72-11 and 42-72-15 of the General Laws in Chapter 42-72
29 entitled "Department of Children, Youth and Families" are hereby amended to read as follows:

30 **42-72-11. Protective services.**

31 In furtherance of the purposes and duties imposed by this chapter, and in order to
32 implement the procedures of the Rhode Island Child Abuse and Neglect Act contained in chapter
33 11 of title 40, the department shall provide protective services for children. The department shall:

34 (1) In cases in which reasonable efforts are required pursuant to § 15-7-7 or § 40-11-12.2,

1 mobilize the services available in cases of child abuse and neglect which may assist the child and
2 the child's family including, but not limited to, day care, homemaking services, medical attention,
3 social, psychological, and psychiatric evaluation and treatment, emergency shelters, transportation,
4 individual or group counseling, and information and referral;

5 (2) Make reasonable efforts to mobilize services, as required in subsection (1) of this
6 section, which shall include the department providing a mental health referral based on the
7 individual needs of the child within forty-eight (48) hours of the child's removal from their home
8 or the filing of a petition alleging neglect or abuse against the parents, guardians or caretakers of
9 the child, whichever occurs first.

10 ~~(3)~~(3) Establish procedures for administering purchase of service agreements from
11 community and private agencies;

12 ~~(4)~~(4) Develop a policy and procedure manual to be available to all staff workers; and

13 ~~(5)~~(5) Require that the service plan developed for every child under protective care be
14 geared to finding a permanent plan for the child within a time frame of one year, and require a
15 review and evaluation program for all children for whom a plan has been developed.

16 **42-72-15. Children's bill of rights.**

17 (a) No child placed or treated under the supervision of the department in any public or
18 private facility shall be deprived of any personal property or civil rights, except in accordance with
19 due process.

20 (b) Each child placed or treated under the supervision of the department in any public or
21 private facility shall receive humane and dignified treatment at all times, with full respect for the
22 child's personal dignity and right to privacy, consistent with the child's treatment plan.

23 (c) Each child placed in a secure facility under the supervision of the department shall be
24 permitted to communicate with any individual, group, or agency consistent with the child's
25 treatment objectives; shall be provided writing materials and postage; and shall be permitted to
26 make or receive telephone calls to or from his or her attorneys, guardians ad litem, special
27 advocates, or child advocate at any reasonable time.

28 (d) The department shall adopt rules and regulations pursuant to the Administrative
29 Procedures Act, chapter 35 of this title, regarding children placed in secure facilities to specify the
30 following:

31 (1) When a child may be placed in restraint or seclusion or when force may be used upon
32 a child;

33 (2) When the head of a facility may limit the use or receipt of mail by any child and a
34 procedure for return of unopened mail; and

1 (3) When the head of a facility may restrict the use of a telephone by any child.

2 (e) A copy of any order placing a child at a secure facility under the supervision of the
3 department in restraint or seclusion shall be made a part of the child's permanent clinical record. In
4 addition, any special restriction on the use or receipt of mail or telephone calls shall be noted in
5 writing; signed by the head of the facility or the facility head's designee; and made a part of the
6 child's permanent clinical record.

7 (f) Each child placed or treated in a secure facility under the supervision of the department
8 shall be permitted to receive visitors subject to reasonable restriction consistent with the child's
9 treatment plan. The head of each facility shall establish visiting hours and inform all children and
10 their families and other visitors of these hours. Any special restrictions shall be noted in writing;
11 signed by the head of the facility or his or her designee; and made a part of the child's permanent
12 clinical record.

13 (g) Each child may receive his or her clergyman, attorney, guardian ad litem, special
14 advocate, or child advocate at any reasonable time.

15 (h) No person shall be denied employment, housing, civil service rank, any license or
16 permit, including a professional license, or any other civil or legal right, solely because of a present
17 or past placement with the department except as otherwise provided by statute.

18 (i) Each child under the supervision of the department shall have the right to counsel and
19 the right to receive visits from physicians and mental health professionals.

20 (j) Each child under the supervision of the department shall be provided a mental health
21 referral based on the individual needs of the child within forty-eight (48) hours of the child's
22 removal from their home or the filing of a petition alleging neglect or abuse against the parents,
23 guardians or caretakers of the child, whichever occurs first.

24 ~~(k)~~ Each child shall have a right to a hearing, pursuant to rules and regulations
25 promulgated by the department, if the child is involuntarily transferred by the department to any
26 facility outside of the state in accordance with the procedure set forth in § 42-72-14.

27 ~~(l)~~ The children's bill of rights shall be posted in a conspicuous place within any secure
28 facility for the residential housing of children.

29 ~~(m)~~ Every deliverer of services with whom the department enters into a purchased
30 services agreement shall agree, in writing, to observe and post in a conspicuous place, the children's
31 bill of rights.

32 ~~(n)~~ Any child aggrieved by a violation of the children's bill of rights may petition the
33 family court for appropriate equitable relief. The family court shall have exclusive original
34 jurisdiction, notwithstanding any remedy contained in chapter 35 of this title.

1 ~~(h)~~(o) A child victim or witness shall be afforded the protections of § 12-28-9 under the
2 direction of the department of children, youth and families, and the department shall advise the
3 court and the police and the prosecutor on the capacity of the child victim to understand and
4 participate in the investigation and in the court proceedings and of the potential effect of the
5 proceedings on the child.

6 ~~(h)~~(p) Every child placed in the care of the department of children, youth and families shall
7 be entitled to a free appropriate education, in accordance with state and federal law. Immediately
8 upon the assumption of that care, the department shall provide for the enrollment of each child in
9 a school program. During the time that the child shall remain in that care, the department and
10 appropriate state and local education agencies shall coordinate their efforts in order to provide for
11 the timely initiation and continuation of educational services.

12 ~~(h)~~(q) No person shall be denied access to available treatment for an alcohol- or drug-
13 related condition solely because of a present or past placement with the department.

14 ~~(h)~~(r) No child shall be discriminated against on the basis of race, color, religion, ancestry,
15 national origin, gender, sexual orientation, gender identity or expression, socioeconomic status or
16 mental, physical, developmental, or sensory disability, or by association with an individual or group
17 who has, or is perceived to have one, or more of such characteristics.

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

=====
LC005259
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO DOMESTIC RELATIONS -- ADOPTION OF CHILDREN

1 This act would require the family court and/or the department of children, youth, and
2 families (DCYF) to provide any child who is the subject of a DCYF neglect or abuse petition,
3 petition for termination of parental rights or an adoption, based on parental neglect or abuse, with
4 a mental health referral based on the individual needs of the child.

5 This act would take effect upon passage.

=====
LC005259
=====