

2012 -- H 7135

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES

Introduced By: Representatives DaSilva, Azzinaro, Guthrie, Marcello, and Chippendale

Date Introduced: January 17, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-72-15 of the General Laws in Chapter 42-72 entitled
2 "Department of Children, Youth, and Families" is hereby amended to read as follows:

3 **42-72-15. Children's bill of rights.** -- (a) No child placed or treated under the
4 supervision of the department in any public or private facility shall be deprived of any personal
5 property or civil rights, except in accordance with due process.

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

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

14 (d) The department shall adopt rules and regulations pursuant to the Administrative
15 Procedures Act, title 42, chapter 35, regarding children placed in secure facilities to specify the
16 following:

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

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

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

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

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

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

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

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

22 (j) Each child shall have a right to a hearing pursuant to rules and regulations
23 promulgated by the department if the child is involuntarily transferred by the department to any
24 facility outside of the state in accordance with the procedure set forth in section 42-72-14.

25 (k) The children's bill of rights shall be posted in a conspicuous place within any secure
26 facility for the residential housing of children.

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

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

33 (n) A child victim or witness shall be afforded the protections of section 12-28-9 under
34 the direction of the department of children, youth, and families, and the department shall advise

1 the court and the police and the prosecutor on the capacity of the child victim to understand and
2 participate in the investigation and in the court proceedings and of the potential effect of the
3 proceedings on the child.

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

10 (p) No person shall be denied access to available treatment for an alcohol or drug related
11 condition, solely because of a present or past placement with the department.

12 (q) No person shall be remanded to an out-of-state placement by the Rhode Island family
13 court, unless the provisions of section 14-1-65 have been complied with.

14 SECTION 2. Section 14-1-65 of the General Laws in Chapter 14-1 entitled "Proceedings
15 in Family Court" is hereby amended to read as follows:

16 **14-1-65. Hearings for out-of-state placement of children.** -- (a) Prior to authorizing the
17 placement of a child entrusted to the control of the department of children, youth, and families
18 and in an out-of-state child caring facility, other than the home of a relative, the department shall
19 petition the family court for a placement hearing. The family court shall not grant approval for the
20 placement ~~if the following facts are found:~~

- 21 ~~(1) That no suitable in-state facilities are available for the placement of the child;~~
22 ~~(2) That the child will receive an individualized treatment plan, including, but not limited~~
23 ~~to, appropriate clinical treatment, education, training, and rehabilitation; and~~
24 ~~(3) That the proposed placement is in the best interest of the child.~~

25 ~~(b) This section shall not apply when the proposed placement is less than thirty five (35)~~
26 ~~miles from the home of the parent previously having custody of the child.~~

27 unless the court finds, by clear and convincing evidence, that there are no suitable in-state
28 facilities that are available for the placement of a child. In deciding this issue, the court shall
29 consider the following factors:

30 (1) That the department of children, youth and families, has submitted a written request to
31 all pre-approved state of Rhode Island qualified vendors and/or providers for necessary and
32 appropriate service(s) required for a child;

33 (2) That the department of children, youth and families after due consideration makes a
34 determination that no responding qualified vendors and/or providers meet the necessary

1 requirements to adequately meet the individualized needs of the child and shall immediately
2 commence referrals for out-of-state placement;

3 (3) That the child shall receive an individualized treatment plan, including, but not
4 limited to, appropriate clinical treatment, education, training and rehabilitation;

5 (4) That the proposed placement is the best interests of the child; and

6 (5) That the out-of-state treatment facility is the nearest available facility to the child's
7 home.

8 (b) In all cases where the child is place out of state, a representative of the department of
9 children, youth and families shall personally maintain contact with that child by visiting that child
10 in the out-of-state placement on a bimonthly basis.

11 (c) The department of children, youth and families shall also facilitate visits between a
12 child placed out-of-state and their families, which visit shall be at a minimum one time per
13 month.

14 (d) The director of the department of health and human services may make any rules and
15 regulations, not inconsistent with any law that in his or her judgment may be helpful in carrying
16 out of the provisions of this chapter.

17 (e) In all cases, an appeal may be taken by the child or the department of children, youth
18 and families from any final order or judgment of the family court, upon an action commenced
19 under this section, directly to the Rhode Island supreme court within thirty (30) days after the
20 entry of the order of judgment.

21 (f) The child shall have legal representation for any hearing under this section.

22 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 STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES

1 This act would require that the family court not grant approval for out-of-state child
2 placement until the court has determined that there are no in-state providers who can provide the
3 service or services that the child requires and that the out-of-state treatment facility is the nearest
4 available facility to the child's home.

5 This act would take effect upon passage.

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