**RHODE ISLAND GOVERNMENT REGISTER**

**PUBLIC NOTICE OF PROPOSED RULEMAKING**

**AGENCY:** Department of Children, Youth and Families

**DIVISION:** Legal

**REGULATION TITLE: Obtaining Custody via Dependent/Neglected/Abused Petition**

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**
**Date of Public Notice:** July 10, 2018
**End of Public Comment Period:** August 10, 2018

**SUMMARY OF PROPOSED RULE**:
The Department of Children, Youth and Families proposes to adopt Legal Proceedings 214-50-00-1 which will repeal and supersede the following rules:

- Voluntary Placement ERLID: 2840
- Indian Child Welfare Act ERLID:7591
- **Obtaining Custody via Dependent/Neglected/Abused Petition ERLID: 6862**
- Termination of Parental Rights ERLID: 1247
- Direct Consent Adoption ERLID: 1094
- Foster Parent Notice of Court Proceeding ERLID: 7126
- Family Court Hearings for Out-of-State Placements ERLID: 1092
- Referral of Unlicensed Daycare Facilities to the Attorney General's Office ERLID: 6838
- Videotaping of Child Abuse and/or Neglected Victims ERLID: 1097

The proposed repealed rules above will be re-issued as DCYF Department Operating Procedures (DOPs) that will be available on the Department's website at:
http://www.dcyf.ri.gov/policyregs/legal.htm?ms=AAAAAAAAAAA%3D&st=MA%3D%3D&sct=NTg2Nw%3D%3D&mw=MjQw

The proposed regulation Legal Proceedings 214-50-00-1 sets forth the responsibilities of the Department regarding legal proceedings before the Family Court.

**COMMENTS INVITED:**
All interested parties are invited to submit written or oral comments concerning the proposed regulation by **August 10, 2018** to the address listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**
All written comments or objections should be sent to, Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families
**Mailing Address:** DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903
**Email Address:** Sarah.StJacques@dcyf.ri.gov

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903

**PUBLIC HEARING INFORMATION:**

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

**FOR FUTHER INFORMATION CONTACT:**
Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families, 3rd Floor, 101 Friendship Street, Providence, RI 02903 or Sarah.StJacques@dcyf.ri.gov

**SUPPLEMENTARY INFORMATION:**
**Regulatory Analysis Summary and Supporting Documentation:**
There are no new societal costs and benefits in the adoption of this rule.

**Authority for This Rulemaking:** R.I. Gen. Laws §§ 11-5-11, 11-37-6, 14-1-3, 14-1-27, 40-11-2, 40-11-3, 40-11-3.2, 40-11-4, 40-11-5, 40-11-6, 40-11-7, 40-11-12.2, 40-13.2-3.1, 40-72-11, 42-72, 42-72.1-4, 42-72-8, 42-72-14, and Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, and Child Abuse Amendments of 1981, Pub. L. No. 98-457.

**Regulatory Findings:**
In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

# Obtaining Custody of Child through the Dependent/ Neglected/Abused Petition

Rhode Island Department of Children, Youth and Families

**Policy: 1100.0000**
***Effective Date: July 9, 1984 Revised Date: July 31, 2012 Version: 8***

Rhode Island General Laws (RIGL), Chapters 40-11 and 14-1, authorize the Department to petition the Family Court for the commitment of a child to the care, custody and control of the Department when the child is alleged to be dependent, neglected and/or abused. If the child appears to be in imminent danger of further harm, the Department is mandated by RIGL 40-11-7 to petition the Family Court for immediate removal of that child from his/her home through an Ex Parte Order of Detention. The Department is required to obtain judicial determination regarding reasonable efforts to prevent removal within 60 days of the date the child was removed from the home (refer to DCYF Policy 500.0075, Removal of Child from Home).

Once a petition has been filed, the Family Court, as provided in RIGL 40-11-12 and 14-1-34, may find the child is dependent, neglected and/or abused and may commit that child to the care, custody, and control of the Department or place the child under the legal supervision of the Department. Any child who is alleged to be abused or neglected as a subject of a petition in Family Court, as provided in RIGL 40-11-14, has a Guardian Ad Litem and/or a Court Appointed Special Advocate (CASA) assigned by the Court. If the parent or other person responsible for the child's care cannot afford legal representation, the Court may appoint the Public Defender or other counsel to represent that person.

RIGL 14-1-69 allows certain hearsay into evidence at motion hearings, custody trials and termination of parental rights trials where the petition has been filed by the Department. RIGL 14-1-68 and 40-11-7.2 provide for the use of videotaped testimony of a child who is the subject of a petition filed by the Department.

The Department is mandated by RIGL 14-1-11.1 to seek commitment of any child who remains in voluntary placement for a period of 12 months. The exception is when a child with an emotional, behavioral or mental disorder or developmental or physical disability is voluntarily placed with the Department to access an out-of-home program for children with disabilities, including residential treatment programs, residential counseling centers and therapeutic foster care in conformance with DCYF Policy 700.0015, Voluntary Placement.

Federal and state law (RIGL 40-11-12.1) require that a Permanency Hearing take place within 12 months of a child's placement in foster care and every 12 months thereafter until permanency is achieved and the case closes. At the permanency hearing, the Family Court Judge may approve or modify the plan and incorporate the plan into the orders of the court. Subsequent Family Court reviews of the child's placement status shall occur no less frequently than every 12 months.

If a parent does not contact the Department once the child comes into foster care, the Department attempts to locate the parent. Unless there is evidence of unfitness based on abandonment, cruelty or other grounds which allow for immediate filing of a Termination of Parental Rights petition, the Department offers reunification services to correct the situation which led to placement. A legal consult is obtained to determine whether reunification efforts should be offered in cases of abandonment, cruelty or other severe circumstances. A permanency hearing is held within 30 days of a judicial determination that reasonable efforts are not required (refer to DCYF Policy 500.0075, Removal of Child from Home).

If a putative father notifies the Department that he may be the father of a child in care, steps are taken to determine paternity. If a putative father appears in court and executes a denial of paternity form or fails to appear at arraignment and is defaulted, the Family Court finds that the

Department has no duty to make reasonable efforts to strengthen and encourage the relationship between the child and putative father.

## Related Procedures

**Dependent/Neglected/Abused Petition**

**Arraignment or Initial Family Court Hearing and Probable Cause Hearing**
**Trial**
**Court Involvement Related to Voluntary Placement**
**Review and Motion Hearing**

**Permanency Hearing**

**Role of Guardian Ad Litem/CASA**

**Related Policies**

**Removal of Child from Home**
**Voluntary Placement**
**Standards of Proof**
**Termination of Parental Rights**

## Dependent/Neglected/Abused Petition

**Procedure from Policy 1100.0000: Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition**

A. The initiation and filing of the Dependent/Neglected Petition:
   1. The Department seeks to obtain custody of a child through the filing of a "straight" Dependent/Neglected petition when there is a need for Court action in a case but there is no imminent risk of harm to a child(ren). The primary worker discusses the situation and need for Court involvement with his/her supervisor.
   2. The primary worker and/or supervisor confer with Legal Counsel.
   3. If a decision is made to pursue legal action, the primary worker prepares and submits the following to Legal Counsel:
      a. Cover letter addressed to Chief Judge of the Family Court requesting the Court's acceptance of the petition based on the Summary of Facts.
      b. Summary of Facts to Substantiate Dependency, Neglect and/or Abuse.
      c. The summary should address services offered to or received by parents to prevent the need for removal.
      d. A list of proposed witnesses, including parents.
   4. Department Legal Counsel prepares the petition, reviews the summary and list of proposed witnesses and returns the petition to the primary worker who signs it in the presence of a notary.
   5. The primary worker files the cover letter, petition, summary and list of proposed witnesses with the Juvenile Clerk of the Family Court.
   6. The Juvenile Clerk oversees the following procedures:
      a. The Clerk signs and enters the petition.
      b. The case is assigned a hearing date for arraignment. The primary worker enters the assigned hearing date in the Court Activity Window immediately.
      c. Parent(s) are served with a summons to appear at the Family Court for arraignment or Notice by Publication is made in the newspaper in the area of last known address of a parent whose address is unknown. The petition may not proceed to trial until parent(s) are served or until there is Notice by Publication.

B. The initiation and filing of an Ex Parte Order of Detention and Dependent/Neglected/ Abused Petition:
   1. The Department seeks an Ex Parte Order of Detention to immediately remove a child from his/her parent(s) when the child has suffered abuse or neglect and/or is in imminent danger of further physical or emotional harm.
   2. The Detention Order allows the Department to maintain a child in care pending a trial for custody or a Probable Cause Hearing.
   3. When a Family Court Judge signs an order contained with the Affidavit in Support of Ex Parte, the Department is awarded temporary custody of the child, and the arraignment is scheduled to be held within seven days (refer to DCYF Policy 500.0075 Removal of Child from Home).

## Arraignment or Initial Family Court Hearing and Probable Cause Hearing

Procedure from Policy 1100.0000: Obtaining Custody of Child Through the

**Dependent/Neglected/Abused Petition**

A. At the arraignment, the question before the Court is, "Does the parent(s) or other person(s) having custody of or legal responsibility for the child admit or deny the allegations in the petition that the child is dependent/neglected/abused?"
   1. If temporary custody is assigned to the Department and the child is placed out of the home of the parent(s) by Court order, a Probable Cause Hearing must be scheduled within ten days of a request for hearing by parent(s) or their counsel.
   2. The primary worker is prepared at arraignment to answer questions about:
      a. The child's current placement
      b. The availability of suitable relative caretakers as a placement resource
      c. Services offered to the parent(s) to prevent removal and services that will be offered to assist reunification
      d. Visitation plan
      e. If parents whereabouts are unknown, the last known addresses
      f. The reason why petitions may not have been filed on siblings
      g. Whether or not father's name is on birth certificate

B. At the Probable Cause Hearing, the main question before the Court is, "Based upon as accurate and reliable information as possible, are there facts and circumstances that would justify a reasonable person to suspect that a child is abused or neglected?" The Court may also consider whether the child continues to need out of home placement even though probable cause existed at time of the child's removal.
   1. The Child Protective Investigator (CPI) and/or primary worker are often the sole witness at the hearing. The primary worker may use supporting documentation, such as emergency records, at this hearing.
   2. The Family Court Judge must find that there were reasonable grounds to warrant the Ex Parte removal of the child and that there are reasonable grounds to warrant the continued detention of a child pending a trial on the merits.
   3. The Family Court Judge determines if probable cause exists.
      a. If probable cause is found, the child is continued in the temporary custody of the Department (in placement) pending trial.
      b. If probable cause is not found, the child is returned to the custody of the parent(s). The primary worker and supervisor meet with Legal Counsel to reevaluate the basis for the petition and determine if or when the Department should withdraw the petition.

## Trial

### Procedure from Policy 1100.0000: Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition

A. The question before the Court is, "Are the allegations contained in the petition supported by clear and convincing evidence?" This means evidence that indicates that the thing to be proved is highly probable or reasonably certain. This is a greater burden than the preponderance of the evidence but not as great as beyond a reasonable doubt. The judge must form a clear conviction without hesitancy of the truth of the precise facts.

B. The petitioning agency has the burden of proving that the child is in fact dependent, neglected, and/or abused and is in need of the protection of the Court. The State must show that conditions of abuse, neglect and/or dependency that exist in the parent/child relationship are those defined in RIGL chapters 14-1 and/or 40-11.

C. Admissible Testimony:

1. Witness's observations
2. Factual and opinion testimony of expert witness
3. Statements made by the parents prior to trial may be admissible
4. Disclosures made by children age 12 and under regarding abuse or neglect may be admissible through another person to whom the child disclosed, if the statement was made under the following circumstances:
   a. Spontaneously, which can include answers to non-leading questions
   b. To a person the child would normally turn to for sympathy, protection or advice, which may include departmental staff who identify themselves and their role in protecting the child.
   c. Within a reasonable period of time after the abuse occurred, or at the first safe opportunity to disclose the abuse.
   d. Children's answers to direct, open ended questions will often be admitted through the person who heard them when the circumstances in C a, b and c are met.
5. Per RIGL 14-1-68 and RIGL 40-11-7.2, videotaped interviews or statements of victims of child abuse or neglect recorded by the Department, law enforcement officers, and hospitals may be admitted as evidence in Family Court proceedings at the discretion of the Family Court Judge. Certain criteria must be met prior to the admission of the videotaped interview as evidence.
6. Records, photographs, and other documents may be admissible. A worker who is aware of such evidence informs the Legal Counsel of it prior to trial.

D. If the State is unable to prove its case by clear and convincing evidence, the petition is dismissed unless the Department requests and is granted a stay pending appeal to the Rhode Island Supreme Court. Upon dismissal, the Department ceases to be involved with the family unless the family agrees to services.

E. If the Judge finds the child dependent, neglected, and/or abused, the child is generally committed to the care, custody, and control of the Department:

1. The issues of placement and visitation are addressed.

2. The Judge sets a date for the Department to submit a service plan to the Court.

When the service plan is presented to the Court, it is entered into the Court file and is made an order of the Court. This will become important evidence if a petition is later filed for Termination of Parental Rights in conformance with DCYF Policy 1100.0020, Termination of Parental Rights.

F. If the Department proves the allegations in its petition, the parent has the right to appeal the trial judge's findings and decisions to the Rhode Island Supreme Court.

## Court Involvement Related to Voluntary Placement

**Procedure from Policy 1100.0000: Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition**

A. Miscellaneous Petition

1. When a child has been in the voluntary placement of DCYF for thirty days (one month), the primary worker prepares a summary of facts to support a miscellaneous petition. The purpose is for the Family Court to assume jurisdiction and to determine whether or not continued placement or a particular placement is in the child's best interest and, if so, whether or not there is an appropriate case plan, as outlined in R.I.G.L. §42-72-14(c) and 42C.F.R.1352.21(b)(1)(i) and (k)(1)(i).
2. The primary worker schedules a legal consult so a miscellaneous petition may be prepared. If a miscellaneous petition is filed, the primary worker notifies the parent or guardian of the time of the hearing. The Department notifies the Office of the Child Advocate of the filing of the petition and the date of the hearing.
3. The primary worker asks the Juvenile Clerk to schedule the hearing on the petition within sixty days of the child's placement.
4. Legal Counsel prepares a miscellaneous petition to bring the matter before the Family Court for review. A Miscellaneous Petition must be filed in Family Court within 60 days so that the Department can receive federal reimbursement.
5. The Family Court must conduct a hearing within sixty days of the voluntary placement of a child per federal regulation.

B. Filing of a Dependent/Neglected/Abused Petition

1. The Department must petition the Family Court for custody of any child who has been voluntarily placed with the Department in foster care for a period of twelve months, except for children with certain disabilities.
2. The Department will not seek custody of a child with an emotional, behavioral or mental disorder or developmental or physical disability who has been voluntarily placed with the Department by a parent or guardian to access an appropriate out-of-home program when there are no issues of parental abuse or neglect. Such programs include but are not limited to residential treatment programs, residential counseling centers, and therapeutic foster care programs.

C. According to federal law (P.L. 105-89) and 42C.F.R1356.21(b)(2)(i), any child in voluntary placement is subject to the same time frames for permanency, including permanency hearings and termination of parental rights, as for all children in out of home placement.

## Review and Motion Hearings

### Procedure from Policy 1100.0000: Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition

A. A motion may be filed to change placement of a child, visitation, custody status, to compel parental compliance, for contempt, for review, or for other purposes. When a motion is filed, the question before the Court is "Has there been a change of circumstances which would warrant the granting of the motion?"

B. Standard of Proof in Motion Hearings:
   1. Motions require evidentiary hearings if the parties cannot agree on a resolution.
      Sworn testimony is usually taken.
   2. The Rules of Evidence apply in motion hearings. Hearsay is not as freely admissible as it would be in a probable cause hearing. First hand witnesses may have to testify in support of the motion.
   3. The party who filed the motion must present proof by a fair preponderance of the evidence and must show a substantial change of circumstances from prior relevant court orders.

C. One of the following outcomes may occur at the Motion Hearing:
   1. Custody, placement or visitation modified
   2. Other orders modified or amended
   3. Status quo maintained

D. The question before the Court in a Review Hearing is, "What is the status of this case?" The review gives the Court insight into the current situation and to monitor the progress that the family and the Department have achieved in reaching the case plan goal.

E. A court review is scheduled by the presiding Judge at the conclusion of the trial. The review is usually scheduled six months after this time. There may be circumstances which would warrant a hearing prior or subsequent to this interval:
   1. At each subsequent review, the presiding Judge schedules the next review.
   2. The Court also schedules a hearing upon the filing of a motion by any of the parties (DCYF Legal, GAL, CASA or parent's attorney). The Review or Motion Hearing can be used by any party to inform the Court that another party is not performing agreed upon tasks or to request changes.

F. Standard of Proof in Reviews:
   1. The review is usually not an evidentiary hearing, so there usually is no formal taking of sworn testimony.
   2. Hearsay and opinion are admissible. The Court hears all statements which may have bearing on the disposition even if it would be inadmissible at trial.

3. ~~If the review is an evidentiary hearing, the standard of proof is fair preponderance of the evidence.~~

## Permanency Hearing

### Procedure from Policy 1100.0000: Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition

A. Permanency hearings are required in the following situations:
   1. Federal law [42 U.S.C. §675(5)(C)] requires that a permanency hearing be held within 12 months after a child is considered to have entered foster care, and every 12 months thereafter until the case closes.
   2. State law [R.I.G.L. § 40-11-12.1(a), (g)] requires that the Department file a motion for a permanency hearing when a child is placed for twelve months in the care of the Department or in an out-of-home program for children with disabilities,
   and that such a hearing occur every 12 months thereafter.
   3. Thirty days after the Family Court makes a determination that no reasonable efforts are required. (Please refer to DCYF Policy 500.0075, Removal of a Child from Home.)
   4. Thirty days following a finding by the Family Court terminating parental rights.

B. Permanency Hearing
   1. Family Court considers at the permanency hearing whether the Department has made reasonable efforts to finalize the permanency plan that is in effect for a child. The child's health and safety is the paramount concern. The Primary worker prepares a report to the Family Court That addresses reasonable efforts including:
      a. Appropriateness of the Department's plan for service to the child and parent
      b. What reunification services have been offered
      c. Efforts to evaluate another permanency goal considering in-State and out-of-State permanent placement options when reunification is not likely, and
      d. Further efforts that have been or will be made to promote the child's best interests.
   2. In any permanency hearing held with respect to the child, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.
   3. The permanency hearing determines the services needed to assist a child who has attained age 16 with the transition from placement to living independently.
   4. The Family Court Judge must find that the Department has made reasonable efforts to finalize the permanency plan. Family Court makes explicit findings that include the permanent plan for the child, steps to be taken, time frames for accomplishing the goal and the date of the next hearing. The Family Court may approve or modify the plan presented by the Department and may incorporate the plan into orders of the Court.
   5. If the Court does not return the child to the care and custody of the parent, guardian or relative and the Court does not direct that foster care of the

~~child and reunification efforts be continued, the Department institutes a proceeding within thirty (30) days of the permanency hearing pursuant to Chapter 7 of Title 15 to legally free the child for adoption.~~

~~6. A court review, administrative review or hearing related to a review of a termination of parental rights' petition cannot substitute for a permanency hearing. A permanency hearing must occur within the prescribed time frame and findings must be made at this hearing.~~

~~7. If a child is in an out-of-State placement at the time of the permanency hearing, the permanency hearing must determine whether the out-of-State foster care placement continues to be appropriate and in the child's best interest.~~

# Role of Guardian Ad Litem (GAL)/Court Appointed Special Advocate (CASA)

Procedure from Policy 1100.0000: Obtaining Custody of Child Through the **Dependent/Neglected/Abused Petition**

A. A GAL or CASA is assigned to represent the interests of a child who is the subject of a Dependent/Neglected/Abused Petition. A GAL is an attorney who usually is experienced in juvenile law.
   1. A GAL is appointed in situations when there may be a conflict with the CASA office, such as, the when a minor represented by CASA has a child also who has legal involvement with the Department.
   2. A GAL can be appointed to represent the interests of a parent who the Court believes may have physical, emotional, or mental limitations which impair his/her abilities to make decisions regarding the best interests of the child and assist counsel in the presentation of the case.

B. The Office of the Court Appointed Special Advocate, an arm of the Family Court, consists of attorneys knowledgeable in juvenile law, social workers and volunteers from the community.
   1. A volunteer, who is trained by the Office of CASA, may be appointed to assess the situation of a child. The Court allows the volunteer to contact all parties and to have access to Department and Family Court records.
   2. An attorney from the Office of CASA, in conjunction with the volunteer, is also appointed to each case. The attorney provides supervision and assistance to the volunteer in his/her efforts to make an accurate assessment and appropriate recommendations.

**214-RICR-50-00-1**

**TITLE 214 – Department of Children, Youth, and Families**

**CHAPTER 50 – Legal**

**SUBCHAPTER 00 – N/A**

PART 1 – Legal

# 1.1 Purpose

This regulation details the responsibilities of the Department's Legal Counsel which represents the Department in Family Court proceedings related to child abuse and neglect, in commitment trials and in termination of parental rights, civil litigation in state and federal courts and administrative and labor tribunals.

# 1.2 Authority

These regulations are promulgated pursuant to R.I. Gen. Laws §§ 14-1-5, 15-7-4, 15-7-5, 40-11-7, and 40-12-15, and the Indian Child Welfare Act (ICWA) (Pub. L. 95-608, 92 Stat.3069).

# 1.3 Application

The terms and provisions of these regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

# 1.4 Severability

If any provision of these regulations or application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

# 1.5 Definitions

A. "Beyond a reasonable doubt" means the most stringent standard of proof and is used in criminal and delinquency proceedings.

B. "Child abuse and neglect (CA/N)" means a child whose physical or mental health or welfare is harmed, or threatened with harm, when his or her parent or other person responsible for his or her welfare:

1. Inflicts, or allows to be inflicted, upon the child physical or mental injury, including excessive corporal punishment; or

2. Creates, or allows to be created, a substantial risk of physical or mental injury to the child, including excessive corporal punishment; or

3. Commits, or allows to be committed, against the child, an act of sexual abuse; or

4. Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; or

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

6. Abandons or deserts the child; or

7. Sexually exploits the child in that the person allows, permits, or encourages the child to engage in prostitution as defined by the provisions in R.I. Gen. Laws § 11-34.1-1 et seq., entitled "Commercial Sexual Activity"; or

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

9. Commits, or allows to be committed, any sexual offense against the child as such sexual offenses are defined by the provisions of R.I. Gen. Laws Chapter 11-37, entitled "Sexual Assault", as amended; or

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

C. “Clear and convincing” means the standard used at the trial stage of neglect and abuse proceedings. It is defined as fully convincing or that more than a majority of the evidence points to one conclusion.

D. “Department” means the Department of Children, Youth and Families and includes all current and former employees, agents, student interns, volunteers, contractors, and vendors.

E. “Preponderance of the Evidence” means evidence of a greater weight or more convincing that the evidence in opposition to it; that is, evidence which shows that the fact sought to be proved is more probable than not.

F. “Prima facie” means the evidence "on its face" sufficiently sustains the allegations. Such evidence includes the Physician's Report of Examination.

G. “Probable cause” means reasonable grounds to believe that the allegations are true based on a majority of the evidence. In cases of child abuse or neglect, the respondent's counsel can request a hearing at which time the state must show just cause for the removal and continued detention of the child pending trial.

H. “Standard of Proof” means how much proof or evidence is required for the state to meet its burden of proof and persuade the judge of its contention. The standard varies, depending upon the nature of the court proceedings.

## 1.6 Voluntary Placement

A. The Department may accept a request for voluntary placement of a child if the child could benefit from foster care or residential treatment services.

B. Voluntary placements may be authorized when precipitating problems are expected to be resolved within six (6) months unless the child has an emotional, behavioral, or mental disorder or developmental or physical disability. It must also be clearly documented that home-based or preventive services have not been successful or do not appear to be appropriate, that alternative resources are unavailable, and that court action is unnecessary.

D. Upon the timely request of a parent(s) or guardian, the Department must return the child to the parent(s) or guardian or obtain a valid court order prohibiting the child’s return.

E. The Department petitions the Family Court within 120 days of admitting a child on a voluntary basis to determine if continued placement outside of the home of the parent is in the child’s best interest.

F . The Family Court conducts a hearing within 180 days of the voluntary placement of the child.

G . Any child in voluntary placement is subject to the same provisions relating to administrative reviews, permanency hearings and time frames for permanency, including termination of parental rights, for all children in out of home placement.

H. When any child, except a child with disabilities, remains in voluntary placement for a period of twelve (12) months, the Department must petition the Family Court to request care, custody and control of the child.

H. The Department will not seek custody of a child with an emotional, behavioral or mental disorder or developmental or physical disability who has been voluntarily placed with the Department by a parent or guardian for the purpose of accessing an out-of-home program for the child in a facility that provides services for children with disabilities when there are no issues of parental abuse or neglect.

I. The Department pays for the support and maintenance of children in its care who are placed outside of their natural home through court action or by Voluntary Application/Authorization/Consent. The Department may seek reimbursement from the parents of children in placement.

## 1.7 Indian Child Welfare Act

A. The Department protects the rights of Indian children, families, and tribes in compliance with the Indian Child Welfare Act (ICWA).

## 1.8 Obtaining Custody via Dependent/Neglected/Abused Petition

A. The Department petitions the Family Court for the commitment of a child to the care, custody and control of the Department when the child is alleged to be dependent, neglected and/or abused.

B . If the child appears to be in imminent danger of further harm, the Department petitions the Family Court for immediate removal of that child from his/her home through an Ex Parte Order of Detention. The Department must obtain judicial determination regarding reasonable efforts to prevent removal within sixty (60) days of the date the child was removed from the home.

C. Once a petition has been filed, the Family Court may find the child is dependent, neglected and/or abused and may commit that child to the care, custody, and control of the Department or place the child under the legal supervision of the Department.

D . Any child who is alleged to be abused or neglected as a subject of a petition in Family Court, has a Guardian Ad Litem and/or a Court Appointed Special Advocate (CASA) assigned by the Court.

E. A Permanency Hearing must take place within twelve (12) months of a child's placement in foster care and every twelve (12) months thereafter until permanency is achieved and the case closes.

F. If a parent does not contact the Department once the child comes into foster care, the Department attempts to locate the parent. Unless there is evidence of unfitness based on abandonment, cruel and abusive treatment of a child, prior termination of parent rights, or other grounds which allow for immediate filing of a Termination of Parental Rights petition, the Department offers reunification services to correct the situation which led to placement. A permanency hearing is held within thirty (30) days of a judicial determination that reasonable efforts are not required.

G. If a putative father notifies the Department that he may be the father of a child in care, steps are taken to determine paternity. If a putative father appears in court and executes a denial of paternity form or fails to appear at arraignment and is defaulted, the Family Court finds that the Department has no duty to make reasonable efforts to strengthen and encourage the relationship between the child and putative father.

## 1.9 Termination of Parental Rights

A. The Department makes reasonable efforts to prevent or eliminate the need for placement of a child outside the home, as long as the child's safety is assured; to affect the safe reunification of the child and family, if out of home placement is necessary; and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible, as noted in § 1.9(B)(1)(c).

B. Reasonable efforts must be made by the Department prior to the filing of the petition to encourage and strengthen the parental relationship so that the child can safely return to the family. Services are provided to the birth parent(s) of a child in an effort to assist the parent, the child, and the Department in determining the best permanent plan for the child. If services do not result in the reunification of a child with his or her family, the Department has the responsibility to consider adoption or some other permanent plan for the child.

1. There are specific circumstances when federal and state law do not require the Department to make reasonable efforts to preserve and reunify families. Reasonable efforts are not required and the Department may petition the court for termination of parental rights if the Court has determined:

a. Parent has subjected any child to conduct of a cruel and abusive nature;

b. Parent has had his/her parental rights to a sibling of the child terminated involuntarily;

c. Parent has subjected the child to aggravated circumstances, including abandonment, torture, chronic abuse and sexual abuse;

d. Parent has committed murder or voluntary manslaughter on another child of the parent or has committed a felony assault that results in serious bodily injury to the child or another child of the parent or has aided, abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or

e. Parent has abandoned or deserted the child.

C. Following the granting of termination of parental rights, a permanency hearing is held within thirty (30) days to address and review the permanency plan for the child.

D. If the Department determines that adoption is the best plan for the child and the parent agrees, the parent can voluntarily terminate parental rights or directly consent to adoption. If the parent is unwilling to relinquish parental rights, the Department petitions the court for involuntary termination.

E. In each case, the Department attempts, through reasonable efforts, to provide services to the biological father with his child. If he cannot be contacted directly by the Department, the biological father has the right to be notified of his child's adoption through legal service or advertisement and his parental rights are terminated before the child is eligible for adoption. If the mother does not identify the biological father, the court, after taking testimony of the mother may give notice to all parties in interest through appropriate newspaper advertisement.

F. The Department petitions the Family Court for the termination of parental rights. After notice to the parent and a hearing on the petition, the Family Court may terminate any and all legal rights of the parent(s) to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the Court finds as a fact by clear and convincing evidence that it is in the best interest of the child(ren) to terminate parental rights and:

1. Parent has willfully neglected to provide proper care and maintenance for the child for a period of at least one (1) year where financially able to do so.

2. Parent is unfit because of conduct or conditions seriously detrimental to the child, such as but not limited to the following:

    a. Institutionalization of the parent, including imprisonment, for an extended period;

    b. Conduct toward any child of a cruel or abusive nature;

    c. Child has been placed in the legal custody or care of the Department and the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide care for a child for a period of twelve (12) months due to substance abuse constitutes prima facie evidence of a chronic substance abuse problem;

    d. Child has been placed with the Department and the Court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent; and provided, that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period considering the child's age and the need for a permanent home;

    e. Parent has subjected the child to aggravated circumstances, including abandonment, torture, chronic abuse, and sexual abuse;

    f. Parent has committed murder or voluntary manslaughter on another of his or her children or has committed a felony assault resulting in serious bodily injury on that child or another of his or her children or has aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter;

    g. Parent has exhibited behavior or conduct that is seriously detrimental to the child, of a duration that renders it improbable for the parent to care for the child for an extended period;

h. Child has been placed in the legal custody or care of the Department for at least twelve (12) months; and the parents were offered or received services to correct the situation which led to the child being placed, and if there is not a substantial probability that the child will be able to return safely to the parents' care within a reasonable period of time, considering the child's age and the need for a permanent home; or

i. Parent has abandoned or deserted the child. A lack of communication or contact with the child for at least a six (6) month period constitutes prima facie evidence of abandonment or desertion. In the event that parents of an infant have had no contact or communication with the infant for a period of six (6) months, the Department files a petition and the Family Court conducts expedited hearings on the petition.

G. Once the petition is filed, the Department is no longer obligated to make reasonable efforts to strengthen the parental relationship. The parent can continue to exercise his/her right to visit with the child in accordance with the current visitation plan. The Department must motion the Court for approval to alter the visitation plan.

## 1.10 Direct Consent Adoption

A. A parent may voluntarily sign a Direct Consent Adoption petition for the adoption of his/her child by the person(s) currently providing care.

B. The biological parent(s) must be notified of and be present at the hearing on the petition to testify to his/her decision to consent to the adoption.

## 1.11 Foster Parent Notice of Court Proceeding

A. The Department provides written notice to foster parents and relative caregivers with whom children in the care of the Department are placed, of any review or hearing held in Family Court with respect to those children. This includes all hearings scheduled both prior to and subsequent to commitment resulting from dependency/neglect/abuse petitions and all hearings related to termination of parental rights petitions.

B . Foster parents have the right to attend these court proceedings and to present verbal reports or file written reports with the Court regarding the children placed in their care.

## 1.12 Family Court Hearings for Out-of-State Placements

A. The Department is mandated to petition the Rhode Island Family Court for a placement hearing prior to authorizing placement of a child entrusted to the care of the Department in an out-of-state child care facility.

B . A Family Court hearing is not necessary if the child will be placed in the home of a relative or if the out-of-state child care facility is located less than 35 miles from the home of the parent previously having custody of the child.

## 1.13 Referral of Unlicensed Daycare Facilities to the Attorney General Office

A. The Department investigates any complaints received regarding unlicensed daycare operations.

B. If it is determined that daycare is being provided, the Department sends written notification requiring the individual(s) to cease and desist from providing unlicensed day care and giving the individual(s) thirty (30) days to begin the licensing process. Failure to comply with the cease and desist order will result in referral to the Attorney General's office for enforcement.

## 1.14 Coordinating Efforts with Office of the Attorney General in Criminal Prosecution

A. Pursuant to R.I. Gen. Laws § 40-11-7, if the Department has reasonable cause to know or suspect that a child has been subjected to criminal abuse or neglect, the Department will immediately forward any information relating to the knowledge or suspicion to the appropriate law enforcement agency.

B. The Office of the Attorney General is vested with the legal responsibility to determine whether or not legal grounds exist to pursue criminal prosecution in cases involving child abuse and/or neglect. In many of these cases, the Department has intervened to provide services intended to ensure for the protection and safety of children who are victims of child abuse and/or neglect. In such cases, it is important that staff within the respective agencies coordinate efforts to ensure the safety and protection of these children.

C. Upon notice of a criminal investigations of child abuse and/or neglect from a law enforcement agency, the Juvenile Division of the Office of the Attorney General (AG) forwards a request for information to the Department's Office of Legal Counsel.

D. The Department's Legal Office provides the AG's Office with the following information:
    1. A copy of the Child Protective Services (CPS) investigation which relates to the criminal investigation.
    2. Conformation as to whether or not the Department has initiated a child protection custody petition and/or whether or not the case is currently active with the Department.
    3. Name and telephone number of the casework supervisor assigned to the case.

E. The AG's Office contacts the assigned casework supervisor to determine the status of the child's placement and the Department's visitation plan with the alleged offender.

F. If the Office of the Attorney General proceeds with the filing of criminal charges, the AG's office forwards a copy of the criminal information package to the Department's Legal Office.

G. The AG's Office notifies the Department of the disposition of the criminal charges, including the initiation of a "no contact order" and/or any modification of any outstanding no contact orders.

H. The Department notifies the AG's Office of any change in the offender's access to the child through visitation, placement, or otherwise.

## 1.15 Videotaping of Child Abuse and/or Neglected Victims

A. Interviews or statements of children victims who otherwise would risk additional emotional harm can be recorded on videotape. The twofold intent of the Department in videotaping a child is:

    1. to avoid unnecessary and/or repetitive interviews; and

    2. when possible, to use the videotape in lieu of at least a portion of the child's direct testimony in Family Court.

B. To be most effective, videotapes are recorded at the earliest possible point in the Department's intervention.

C. If all specified prerequisites have been met, including having the child available for cross examination, then the videotaped interviews or statements recorded by the Department, law enforcement officers, and

hospitals may be introduced into evidence in the Family Court proceedings as initiated by the Department pursuant to R.I. Gen. Laws §§ 40-11-7, 14-1-32, and 14-1-34.