RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Legal

REGULATION TITLE: Referral of Unlicensed Daycare Facilities to the Attorney General's Office

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:
Date of Public Notice: July 11, 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The proposed repealed rules above will be re-issued as DCYF Department Operating Procedures (DOPs) that will be available on the Department's website at: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.

RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES
GUIDELINES FOR REFERRAL OF UNLICENSED/UNCERTIFIED
DAYCARE FACILITIES TO ATTORNEY GENERAL'S OFFICE

August 26, 1991

1. Complaint received by day care supervisor and assigned to a worker for investigation.

2. Unannounced site visit by worker to determine if day care is being provided. Worker will observe to see if there is evidence that child care is being provided and will speak to individual(s) about complaint to obtain information.

3. If the worker determines that day care is being provided, the worker will notify the individual(s) verbally of the law requiring day care to be licensed/certified and inform them that they must either come in for licensing/certification or cease operation.

4. The worker will follow up the site visit with written notification to the individual(s), giving them 30 days to begin licensing/certification process or provide us with written notification that they are no longer providing day care. They will be informed in this notification that failure to respond within 30 days will result in referral to the Attorney General's office for enforcement. If the individual responds that they are no longer providing day care and another complaint is received at a later date, a referral will be made at that time.

5. The referral to the Attorney General's office should consist of a cover letter (drafted by Legal Counsel) signed by the Executive Director with appropriate documentation attached. A letter should be sent to the individual notifying them of the referral.

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.