RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Legal

REGULATION TITLE: Termination of Parental Rights

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The proposed repealed rules above will be re-issued as DCYF Department Operating Procedures (DOPs) that will be available on the Department's website at: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.

Termination of Parental Rights

Rhode Island Department of Children, Youth and Families
Policy: 1100.0020

Effective Date: December 18, 1984 Revised Date: January 22, 2002 Version: 2

The federal Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) and Adoption and Safe Families Act of 1997 (PL 105-89) and Rhode Island General Law (RIGL 40-11 and 42-72) require the Department to make 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 effect 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. The child's health and safety is the State's paramount concern.

In most cases, 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 agency has the responsibility to consider adoption or some other permanent plan for the child.

When a child has been in the care of the Department for twelve months, a permanency hearing must be held in the Family Court to address whether the Department has made reasonable efforts toward permanency. The child's caseworker, in preparation for that hearing, should consider numerous factors including, but not limited to, the progress made by the parents; whether appropriate services were offered, received or provided; the likelihood of safe reunification in the near future; and the child's best interests. Best interests may be evaluated by considering the child's relationship with the parents and the foster family; physical, psychological, intellectual and emotional needs; and any other special needs of the child. These hearings serve as important mileposts in determining whether a TPR petition needs to be filed. Following the granting of termination of parental rights, a permanency hearing must be held within thirty days to address and review the permanency plan for the child.

If the agency 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 must act expeditiously to petition the Court for involuntary termination.

Those persons having a legal relationship with the minor child are the mother, the natural father, and/or the legal father. The natural father is the biological father. The legal father is the man married to the mother at the time of the child's conception or birth or the man who has otherwise been determined to be the father by a court of competent jurisdiction. To determine the biological and/or legal father, all marriages and divorces should be verified through the Bureau of Vital Statistics in the state in which the marriage or

~~divorce occurred.~~

~~The Department is obligated to attempt, through reasonable efforts, to provide services to involve the natural father with his child. If he cannot be contacted directly by the agency, the natural father has the right to be notified of his child's adoption through legal service or advertisement and his parental rights must be terminated before the child is eligible for adoption. If the mother cannot or will not identify the natural father, the Court, after taking testimony of the mother may give notice to all parties in interest through appropriate newspaper advertisement.~~

~~One of the Department's most important roles is to work towards a safe, nurturing permanent home for each child in its care. Failure to adhere to statutory procedures and time frames for permanency may be detrimental to a child's overall welfare.~~

In accordance with RIGL 15-7-7, the Department or a licensed child placing agency must petition the Family Court for the termination of parental rights. The Court shall, after notice to the parent and a hearing on the petition, 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:

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

- Parent is unfit by reason of conduct or conditions seriously detrimental to the child, such as, but not limited to, the following:
  - Institutionalization of the parent, including imprisonment, for an extended period of time
  - Conduct toward any child of a cruel or abusive nature
  - 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 of time, 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 shall constitute prima facie evidence of a chronic substance abuse problem
  - 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 of time considering the child's age and the need for a permanent home
  - Parent has subjected the child to aggravated circumstances, which circumstances shall be abandonment, torture, chronic abuse and sexual abuse
  - 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; or
  - 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 of time

- 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 provided that 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

- Parent has abandoned or deserted the child. A lack of communication or contact with the child for at least a six (6) month period shall constitute 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 shall file a petition pursuant to this section and the Family Court shall conduct expedited hearings on the petition.~~

~~There are specific circumstances when federal and state law do not require the Department to make reasonable efforts to preserve and reunify families The decision not to provide reasonable efforts must be made in consultation with DCYF legal counsel. In the unusual event that reasonable efforts will not be made and no TPR petition will be filed immediately, the Department should inform the Family Court at the next hearing that no such efforts will be made. Reasonable~~

efforts are not required and the Department may petition the Court for termination of parental rights if the Court has determined:

- Parent has subjected any child to conduct of a cruel and abusive nature
- Parent has had his/her parental rights to a sibling of the child terminated involuntarily
- Parent has subjected the child to aggravated circumstances, including abandonment, torture, chronic abuse and sexual abuse
- 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
- Parent has abandoned or deserted the child

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. The agency has an affirmative duty to identify, recruit, process and approve a qualified family for adoption or other permanent living arrangement for the child.

In considering the termination of rights, the Court gives primary consideration to the physical, psychological, mental, and intellectual needs of the child.

Related Procedures…

Worker Responsibility
Voluntary Termination of Parental Rights
Voluntary Termination of Parental Rights by a Minor
Parent Involuntary Termination of Parental Rights

Worker Responsibility

Procedure From Policy 1100.0020: Termination of Parental Rights

A. While providing services to the child and family, the worker must make reasonable efforts to encourage and strengthen the parent/child relationship. All efforts must be documented in Case Activity Notes in chronological order and a detailed manner.
B. When a child has been in the care of the Department for twelve months, a permanency hearing must be held in the Family Court to address whether the Department has made reasonable efforts toward permanency.
    1. Caseworker, in preparation for that hearing, should consider numerous factors, including but not limited to the progress made by the parents; whether appropriate services were offered, received or provided; the likelihood of safe reunification in the near future; and the child's best interests.
    2. Best interests may be evaluated by considering the child's relationship with the parents and the foster family; physical, psychological, intellectual and emotional needs; and any other special needs of the child.
    3. These hearings serve as important mileposts in determining whether a TPR petition needs to be filed.
C. The worker should initiate a voluntary termination of parental rights (TPR) petition when the parent is willing to voluntarily relinquish parental rights with full understanding and awareness. Parent should make this decision after consulting with his or her attorney.
D. The worker should initiate an involuntary TPR when the parent is unwilling or unable to agree to a voluntary TPR and one of the following situations exist. The Department must show that reasonable efforts were made to encourage and strengthen the parental relationship prior to the filing of the petition and that parental conduct or condition occurred or exists despite efforts made by the Department. This does not apply in situations outlined below in subsections 2(b), 2(d), 2(e), 2(f) or section 4.
    1. The parent has willfully neglected to provide proper care and maintenance for the child for a period of at least one year when financially able to do so. The Court may disregard contributions of infrequent or insubstantial nature.
    2. The parent is unfit by reason of conduct or condition detrimental to the child, such as, but not limited to:
        a. Institutionalization, including imprisonment for an extended period of time. The Department must make reasonable efforts.
        b. Conduct toward any child of a cruel and abusive nature.
        c. The child has been placed in the legal custody or care of the Department for Children Youth and Families and the parent has a chronic substance abuse problem and the parent's prognosis indicated that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and need for a permanent home. That fact that a parent has been unable to provide care for a child for a period of twelve (12) months due to substance abuse shall constitute prima facie evidence of a chronic substance abuse problem.
        d. The child has been placed with the Department of Children, Youth and

~~Families and the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the courts finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child's age and the need for a permanent home.~~

~~e. The parent has subjected the child to aggravated circumstances, which may include but is not limited to abandonment, torture, chronic abuse, and sexual abuse.~~

~~f. The parent has committed murder, or voluntary manslaughter on another of his/her children or has committed a felony assault resulting in serious bodily injury on said child or another of his/her children.~~

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 of time.

3. The child has been placed in the legal custody or care of the Department of Children, Youth and Families 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 provided further that there is not a substantial probability that the child will be able to return to the parents' care within a reasonable period of time considering the child's age and the need for a permanent home.

4. The parent has abandoned or deserted the child. A lack of communication or contact with the child for a period of six months constitutes prima facie evidence of abandonment or desertion.

E. If the Court determines that no further reasonable efforts need to be made, the Department shall initiate a proceeding within thirty (30) days of the Permanency Hearing to terminate parental rights.

F. The Department is not obligated to continue to make reasonable efforts to strengthen the parental relationship after the TPR petition is filed. Any decision to provide services after the TPR is filed should be made in consultation with the assigned DCYF trial attorney. 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.

G. A TPR petition need not be filed if compelling reasons support that decision.

1. Children who are in out of home care for 15 months within 22 consecutive months are identified through a computer generated report, which is provided to regional administrative staff.

2. Worker and supervisor should be familiar enough with the family to move forward in the decision making process at this time to either file a TPR; not file a TPR at all; or not file a TPR yet.

3. The following should be used as guidelines to determine if compelling reasons exist not to file a TPR.

a. Is the child placed with a relative who is willing and able to care for him or her permanently?

b. Is the child bonded to a non-relative who is willing and able to serve as a permanent home?

c. Have the parents made measurable progress? Do they need only a few more months to complete the case plan requirement?

d. Is independent living the permanency planning goal for the child?

e. Do the parent and child have a significant bond but the parent cannot care for the child due to the parent's or child's disability or treatment needs?

f. Does the child wish not to be adopted?

g. Have the services identified in the case plan not been provided, for reasons other than the parent's non-compliance (such as lack of availability, lack of proximity, waiting lists, unique service needs)?

4. If the decision is made to file a TPR, a consult is scheduled with DCYF Legal staff. If the result of the consult is that there are not sufficient legal grounds to file a TPR, this will also constitute a compelling reason. This outcome will be specifically documented on the consultation form by the staff attorney and

incorporated into the case record.

5. If the worker and supervisor believe it is not appropriate to file a TPR, it must be approved by a regional administrator.
6. The reasons for not filing a TPR must be clearly documented with supporting written documentation.
7. The outcome of the legal consult is documented in the case record via a case activity note. Documentation of the decision must be provided to the Court at the next hearing.

H. In cases in which reasonable efforts are required, the Department must demonstrate by clear and convincing evidence that the Department:

1. Consulted and cooperated with the parent or parents in developing a plan for appropriate services to be provided to the child and his/her family.
2. Made suitable arrangements for visitation.
3. Provided services and other assistance to the parent or parents to ensure that problems preventing discharge from foster care would be resolved or ameliorated.
4. Informed the parent or parents about the child's health, progress and development.

l. Once the Family Court makes a finding of parental unfitness in a TPR case, the judge must determine the needs of the child and what is in his or her best interests.
1. RIGL §15-7-7(c)(2) requires consideration of whether a child who is in a foster family has been integrated into that family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into their family. In considering integration into a foster family, the judge should consider the length of time the child has lived in a stable, satisfactory environment; the desirability of maintaining that environment and continuity for the child; and reasonable preference of the child if the court determines the child has sufficient capacity to express a reasonable preference.
2. RIGL 14-1-27(6) requires the Department to consider placement with relatives under certain circumstances.

Voluntary Termination of Parental Rights

Procedure From Policy 1100.0020: Termination of Parental Rights

A. In a voluntary termination the parent voluntarily relinquishes the right to give or withhold consent to adoption, and forfeits any legal rights to the child.
B. The parent should be informed that a court hearing will be held and the parent will have to testify to the validity of his/her signature, to his/her understanding of the consequence, and that his/her consent was given voluntarily:
   1. The worker confers with Legal Counsel, and a petition for the Voluntary Termination of Parental Rights is prepared.
   2. Legal Counsel reviews the court procedure with the worker.
   3. The petition is signed by the parent and witnessed by the caseworker.
   4. A Court letter is prepared which contains all necessary information concerning the child and family.
   5. If the parental rights of any other persons having a legal relationship with the child are not being voluntarily terminated, an involuntary petition seeking the termination of parental rights for these persons is required before the child can become eligible for adoption. If a parent's whereabouts or identity is unknown, an affidavit from the social caseworker must be prepared by legal staff. The affidavit indicates the last known contacts with an absent parent or, in the case of an unknown parent, indicates that such parent is unknown. In addition, the affidavit should contain all other information which may be pertinent to locating an absent parent or to determining the parent's identity or location.
   6. A certified birth certificate is obtained and enclosed with the Court Letter.
   7. The supervisor reviews the material and forwards the paperwork to the Regional Director.
   8. The Regional Director or designee reviews petition, court letter and certified birth certificate and signs the petition.
   9. Information is filed by the caseworker in the Juvenile Clerk's Office in the Family Court. A copy is forwarded to legal staff.
   10. A Court hearing is scheduled in accordance with Family Court procedure.
   11. At the time of the Court hearing, the worker ensures that the parent will be present in court to testify.
   12. A member of the DCYF legal staff represents the Department at the court hearing.
   13. The Court makes the final decision.
   14. If the petition is granted, the parental rights are terminated and the Department is granted the right to consent to the adoption of the child. The worker documents the change in Child Welfare Status in the Court Activity window.
C. If the petition is granted, the child will be placed under the guardianship of the Department.
   1. A permanency hearing must be held within thirty days to address and review the permanency plan for the child.
   2. In the event that a child, whose parents' rights have been terminated, has not been placed by the agency in the home of a person with the intention of adopting the child within thirty (30) days from the date of the final termination decree, the

~~Court shall review the status of the child.~~

~~3. DCYF shall document efforts to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. This must include child specific recruitment efforts, such as the use of state, regional and national adoption exchange.~~

Voluntary Termination of Parental Rights by a Minor Parent

Procedure From Policy 1100.0020: Termination of Parental Rights

A. In a voluntary termination of a minor parent's rights, he/she voluntarily relinquishes the right to give or withhold consent to the adoption of his/her child.
B. The procedure for voluntary TPR of a minor parent's rights is the same as the procedure used with adults, with the following exceptions:
    1. The parent(s) of the minor (or in the absence of the parent(s), an appropriate authority) must also sign the petition.
    2. The minor parent (child under the age of 18) must sign the petition.
    3. One or both of the parents of the minor parent must consent to the petition.
    4. If the whereabouts of the minor's parent(s) is unknown, the guardian ad litem of the minor may consent to the petition. If there is no guardian ad litem, a legal consult is necessary so that a motion can be filed requesting the Court to appoint a guardian ad litem.
        a. Proper notice must be given to the parent(s) of the minor.
        b. The worker must testify that whereabouts of the minor's parent(s) is unknown.
        c. The worker must testify that efforts have been made to locate parent(s) whose whereabouts is unknown.

Involuntary Termination of Parental Rights

Procedure From Policy 1100.0020: Termination of Parental Rights

A. When the permanency goal becomes adoption, and the parent(s) does not wish to relinquish his/her parental rights, it is necessary for the caseworker to file petitions on behalf of the Department to ensure that the child will have permanency.
   1. A meeting is held with supervisory staff to review the material to help decide if the action is appropriate.
   2. If termination is considered to be appropriate, caseworker prepares the following.
      a. Court letter with identifying demographic information
      b. Summary of facts
      c. List of witnesses
   3. A meeting with legal staff is then scheduled.
   4. The case is available for on line review by legal counsel, and case documentation should be current.
   5. Legal Counsel will review the information and decide which grounds are present for termination. The attorney may advise that involuntary termination is premature and may suggest additional steps that should be taken prior to filing a petition.
   6. The petitions are prepared by legal counsel and signed by the caseworker and notarized.
   7. If a parent's whereabouts or identity is unknown, legal staff must prepare an affidavit from the social caseworker.
      a. The social caseworker must be prepared to document the Department's efforts, from the time the case opened to the Department, to search for the parent's whereabouts or identity.
      b. The affidavit indicates the last known contacts with an absent parent or, in the case of an unknown parent, that such parent is unknown. Additionally, the affidavit should contain all other information that may be helpful in locating an absent parent or in determining the parent's identity or location.
   8. A certified birth certificate is obtained.
   9. The supervisor reviews the material and forwards the paperwork to the Regional Director. The petition, Court Letter and certified birth certificate are forwarded to the appropriate Regional Director or designee for signature on the petition.
   10. The information is then filed by the caseworker at the Juvenile Clerk's Office of the Family Court.
   11. Upon the filing of the petition, the status quo regarding visitation is maintained. The Department must motion the Court for approval to alter the visitation plan.
B. The arraignment is scheduled in accordance with Family Court procedures after notifying all parties.
   1. At the arraignment the Family Court judge does the following:
      a. Reads the DCYF petition to the parent and informs the parent that the State is seeking to terminate parental rights.

b. Informs the parent of allegations made by DCYF.
c. Advises the parent of his/her right to an attorney and, if he/she cannot afford one, a Public Defender or other counsel will be appointed.
d. Advises the parent of his/her right to a full hearing where parent, through his/her attorney, can introduce evidence and present and cross-examine witnesses.
e. Assures that a guardian ad litem (GAL) or a Court Appointed Special Advocate (CASA) is appointed when necessary.
f. Makes interim orders to protect the rights and ensure the best interests of the child.
g. Assigns dates for hearing on motions, pre-trial, trial, etc.

2. 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?"
3. The Judge enters an admission or denial of the allegations contained in the petition.

a. If the parent(s) admits allegations, this results in the adjudication of the petition and the parental rights will be terminated. The child will be placed under the guardianship of DCYF. A hearing must be scheduled within 30 days to review the agency's plan for the child.

b. If the parent(s) denies allegations, the matter is assigned for trial or a pre-trial conference. Any other motions are heard or assigned for hearing.

4. In some instances, the case may be scheduled for Family Court mediation. Family Court Administrative Order 98-2 explains the present mediation process.

C. A Pre-trial Hearing is an informal conference in which the trial Judge can bring all parties together in an attempt to rectify differences, reach an agreement without a trial, or stipulate for purposes of trial, stipulate to documents as exhibits, provide a list of anticipated witnesses and provide the court with expectations for how long the trial will take. Prior to a Pre-trial Hearing, the worker and supervisor should discuss possible resolutions of the case and decide which elements of the case plan are deemed necessary and appropriate.

1. A Pre-trial Hearing should usually include the attorneys for all parties, GAL or CASA, and the petitioning DCYF staff person.

2. If parties are unable to reach agreement, the judge sets a date for trial and any other hearings necessary.

D. Trial

1. Court Process

a. The question before the Court is, "Are the allegations contained in the petition supported by clear and convincing evidence?"

b. DCYF must prove that the parent is unfit. Otherwise, the Department cannot prevail on the TPR petition. DCYF must also prove that the granting of the TPR petition is in the child's best interests. In many cases, DCYF must also prove that the Department, prior to the filing of the TPR petition, made reasonable efforts towards reunification.

c. The Court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child in so far as that consideration is not inconsistent with other provisions of the law.

2. Standard of Proof

a. The State must prove its case by "clear and convincing evidence". This means "fully convincing or more than a majority of the evidence leads to one conclusion".

b. It is evidence that would produce in the mind of the trier of fact, a firm belief or conviction about the allegation sought to be established.

c. In this instance, the judge would consider whether the facts DCYF introduces at a trial lead to a conclusion that the parent is unfit and rights should be terminated.

3. Testimony

a. Legal Counsel confers with witnesses who will testify at the hearing. Testimony is based significantly on documentation in the case.

b. Persons normally called upon as witnesses are the social worker, CPI, a physician or other expert, parent or caretaker, or any other person having direct knowledge of the allegations.

c. Procedures detailing admissible testimony, prima facie evidence, and worker as a witness are similar to those outlined in Policy 11000.000 Procedures for Court - Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition - Trial/Testimony.

4. Disposition

a. If the State is unable to prove its case by clear and convincing evidence, the petition is denied. If DCYF is not satisfied with the denial of the petition, the Department must either re-file on different grounds, appeal, or work towards reunification of the child and parent(s). This decision should be made in conjunction with the Department attorney who handled the trial in Court, and the appellate attorney. When a TPR petition is denied, the court usually will order DCYF to submit a reunification case plan, which must be followed unless DCYF obtains a "stay" of such an order.

b. If the petition is granted, the child will be placed under the guardianship of the Department.
   i. A permanency hearing must be held within thirty days to address and review the permanency plan for the child.
   ii. In the event a child, whose parents' rights have been terminated, has not been placed by the agency in the home of a person with the intention of adopting the child within thirty (30) days from the date of the final termination decree, the Court shall review the status of the child.
   iii. DCYF shall document efforts to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. This must include child specific recruitment efforts, such as the use of state, regional and national adoption exchange.

5. Once a decree from the TPR decision is "entered" in the Family Court clerk's office, the unsuccessful party has 20 calendar days to appeal the decision to the Rhode Island Supreme Court. The parents have six months to challenge a TPR decree, but must show clear and convincing evidence that reversing the decree would be in the child's best interests, in accordance with RIGL §15-7-21.1. This applies whether the judgment was made by default or as a result of trial.

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.