

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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

**DIVISION:** Child Protective Services

**RULE IDENTIFIER:** ERLID 6645

**REGULATION TITLE:** **Standards of Proof**

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Date of Public Notice:** January 10, 2018

**End of Public Comment Period:** February 23, 2018

**SUMMARY OF PROPOSED RULE:** The proposed repeal is filed in conjunction with the proposed adoption of 214-RICR-20-00-1, "Child Protective Services." 214-RICR-20-00-1 will replace several existing Child Protective Services regulations as listed in detail below.

The proposed adopted regulation sets forth the responsibilities of the DCYF for child welfare reports to the hotline, criteria for screening in reports, and cases assigned for an investigation or a family assessment response. This Child Protective Services regulation will replace the previous Child Protective Services rules, which will remain in effect as DCYF Operating Procedures, and are available on the Department's website.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **February 23, 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](mailto: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 FURTHER 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](mailto: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.

### **The Proposed Repeal:**

The Department of Children, Youth and Families proposes to adopt 214-RICR-20-00-1 as follows in the concise explanatory statement of proposed non-technical amendments below.

The Department of Children, Youth and Families proposes to repeal the following Child Protective Services regulations and reissue as Department Operating Procedures (DOPs). All DOP's are accessible to the public and may be viewed on the Department's website at: <http://www.dcyf.ri.gov/policyregs/>.

The proposed adoption of 214-RICR-20-00-1, "Child Protective Services" would repeal and supersede the following rules:

- Reporting Child Abuse and/or Neglect 500.0000 ERLID 6615
- Criteria for a Child Protective Services Investigation 500.0010 ERLID 7590
- Response Priorities-Emergency, Immediate, and Routine 500.0015 ERLID 6616
- Information/Referral (I/R) Reports; replaced with Family Assessment Response; 500.0040 ERLID 7958
- Requests for Confidential Info. Received Through the Call Floor 500.0045 ERLID 1176
- Standards for Investigation Child Abuse & Neglect (CA/N) Reports (Levels 1,2,3) 500.0050 ERLID 7589
- Additional Information and Duplicate Reports 500.0055 ERLID 6599
- Processing and Notifications for an Alleged Institutional Abuse/Neglect Case 500.0060 ERLID 6608
- Police Involvement in Child Protective Investigation 500.0065 ERLID 6613
- Removal of a Child from the Home 500.0075 ERLID 6644 (this rulemaking action)
- **Standards of Proof 500.0080 ERLID 6645 (this rulemaking action)**
- Letters of Notification 500.0085 ERLID 6610
- Examination of Child by Physician/Nurse Practitioner and/or Investigator 500.0090 ERLID 6604
- Documenting Results of CPS Investigations in RICHIST 500.0095 ERLID 6602
- Runaway Calls 500.0105 ERLID 1188
- Investigative Reports/Record Keeping 500.0110 ERLID 6609
- Drug Use During Pregnancy 500.0125 ERLID 6603
- Safe Haven for Infants Act 500.0130 ERLID 6626

## **SUMMARY OF NON-TECHNICAL CHANGES**

## **PROPOSED REGULATIONS FOR ADOPTION**

214-RICR-20-00-01

Title 214 – DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES  
Chapter 20 – Child Protective Services

Subchapter 00 – N/A

Part 1 – Child Protective Services

### **Section 1.1 Purpose**

No new provisions, language is from existing state statutes and Department policy.

### **1.2 Authority**

No new provisions, existing state statutes.

### **1.3 Application**

New standard language required by the Office of Regulatory Reform.

### **1.4 Severability**

New standard language required by the Office of Regulatory Reform.

### **1.5 Definitions**

New Definitions:

“Commercial Sexual Exploitation of Children (CSEC)” refers to a range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person.

“Severe forms of trafficking in persons means” (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

“Standardized screening tool” means an assessment instrument that is developed based on statistical analysis of identifying factors that statistically predict child maltreatment. The assessment tool is utilized to screen reports made to the central intake center for purposes of screening in CPS reports for an investigation or a family assessment response.

“Victim of a severe form of trafficking” means a person subject to an act or practice described in paragraph (J).

*Justification for regulatory change:*

Definitions added to comply with federal provisions of the Preventing Sex Trafficking and Strengthening Families Act, P.L. 113–183

## **1.6 Reporting Child Abuse and Neglect**

Any person who has reasonable cause to know or suspect that any child has been abused or neglected, sex trafficked, commercially sexually exploited, human trafficked, or is a victim of sexual abuse by another child, must report that information to the Department’s Child Protective Services (CPS) Hotline within twenty-four (24) hours.

Any person who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program must report that information to the Hotline within twenty-four (24) hours.

*Justification for regulatory change:*

Language added to comply with federal provisions of the Preventing Sex Trafficking and Strengthening Families Act, P.L. 113–183 and RI State Statute § 40-11-3.3 Duty to report – Sexual abuse of a child in an educational program enacted in 2016

## **1.7 Criteria for Child Protective Services Investigation**

The Department must investigate reports that allege child abuse and/or neglect when reasonable cause to believe that abuse or neglect exists. CA/N reports accepted for investigation must contain the following elements:

1. Allegations of sexual abuse by school personnel; or
2. Allegations of sex trafficking and/or severe forms of trafficking of a child under eighteen (18) or under twenty-one (21) years of age if in Department custody.

For purposes of CA/N reports relating to allegations of sex trafficking and/or severe forms of trafficking, any person (not limited to the parent or other person responsible for the child’s welfare) who is alleged to be responsible for committing or allowing to be committed any act of sex trafficking, commercial sexual exploitation, or human trafficking must be subject to an investigation by the Department to determine if the child is a victim of child abuse or neglect. Any child identified as a victim of sex trafficking or severe forms of trafficking is considered a victim of child abuse and neglect and sexual abuse.

*Justification for regulatory change:*

- Allegations of sexual abuse by school personnel is mandated by Rhode Island State Statute § 40-11-3.3 Duty to report – Sexual abuse of a child in an educational program enacted in 2016
- Allegations of sex trafficking is mandated by the federal Preventing Sex Trafficking and Strengthening Families Act, P.L. 113–183, Approved September 29, 2014

## **1.8 Response Priorities**

Department staff utilize a standardized screening tool to determine the response priority for each report of child abuse or neglect that is screened in for an investigation. Response priorities delineate the time limit for the Department to process the report and for the initiation of an investigation.

Assigned investigations must commence within the timeframe of the designated response priority. For all response priorities below, the investigation is initiated when the CPI makes contact or attempts to contact any party associated with the investigation.

1. Priority 1 (emergency) Response – The CPS report must be processed for case assignment within thirty (30) minutes (~~40 minutes~~) after the call is completed. The CPI must respond to the report within four (4) hours (~~40 minutes~~) of the report being received to CPS.
2. Priority 2 (Immediate) Response – The CPS report must be processed for case assignment within two (2) hours (~~one hour~~) after the call is completed. The CPI must respond to the report within twelve (12) hours (~~within shift~~) of the report being received to CPS.
3. Priority 3 (Routine) Response – The CPS report must be processed for case assignment within four (4) hours (~~one hour~~) after the call is completed. The CPI must respond to the report within forty-eight (48) hours (~~24 hours~~) of the report being received to CPS.
4. Priority 1 response criteria include:
  - a. Child held by police/physician/nurse practitioner on a forty-eight (48) hour hold for DCYF placement. Previously categorized as a Priority 2 (Immediate) response time, moved to now be a Priority 1 (Emergency) Response time.

*Justification for regulatory change:*

Response times have been renamed from Emergency, Immediate and Routine to Priority 1, Priority 2, and Priority 3 to align with standardized terms used by the SDM (Structured Decision Making) model.

Response times have been changed to provide more realistic timeframes and to parallel our sister states' investigatory response times.

## **1.9 Standards for Investigating Child Abuse & Neglect (CA/N) Reports**

All efforts are made to complete each investigation within thirty (30) (ten) days. If an extension of the thirty (30) day timeframe for completion of an investigation is necessary, a supervisor and/or administrator may grant an extension request up to fifteen (15) additional days.

*Justification for regulatory change:*

Timelines have been modified to allow Child Protective Investigators adequate time to complete the investigation in a comprehensive and thorough manner.

## **1.14 Family Assessment Response**

This entire section is new and replaces the Department's previous Information/Referral (I/R) Reports policy: 500.0040.

### *Justification for regulatory change:*

The Department is pleased to announce the development of a Family Assessment Response, a Child Protective Services response to low to moderate risk screened-in reports of child maltreatment that do not meet the statutory criteria for an investigation. The Family Assessment Response will replace the Department's prior categorization of "Information/Referral (I/R)" reports.

The Family Assessment Response, also known as "FAR", provides a comprehensive assessment of child safety, risk of child abuse or neglect, family strengths and need. The FAR is not an investigation, no perpetrator is named and no findings are made.

A family's involvement in the Family Assessment Response is voluntary. The voluntary involvement is critical and opens the door to a partnership between the family and the Department to engage in an assessment of safety, risk, strengths, and needs.

### Guiding Principles of a Family Assessment Response

- Low to moderate risk neglect cases are best served through planning that includes parents as partners.
- Families want safety for their children.
- Families can meet their children's needs with supports and resources.
- Families are better able to care for their children when connections to communities are developed and strengthened.
- Communities want children to be safe and cared for.

The Family Assessment Response supports and enhances the Department's vision of increased family engagement, enhances the practice of solution based casework, assessment of family's needs and strengths, delivery of concrete and supportive services and focuses on child safety.

### Goals of Family Assessment Response

- Provide early intervention to respond to low to moderate risk allegations with the possibility of preventing future high risk or unsafe situations.
- Increase scope of service delivery to provide services and resources for low to moderate risk families. Opportunity to provide services not based on abuse or neglect, but on family need for sustained and supportive parenting of their children.
- Improve Family-Centered Practice by increasing the involvement of the family in assessment and identification of their strengths and needs, and the development of a plan to address issues relating to risk of abuse or neglect.
- Increase resource identification by reviewing service needs and resource availability for immediate and long-term support outside the scope of abuse and neglect.
- Improve engagement and assessment by moving away from incident-based assessments to a comprehensive assessment of the family dynamics, strengths, issues and needs.

# ~~Standards of Proof~~

~~Rhode Island Department of Children, Youth and Families~~

~~Policy: 500.0080~~

~~Effective Date: July 7, 1984~~ ~~Revised Date: December 9, 2011~~ ~~Version: 4~~

~~"Standard of Proof" is a technical and legal term used to describe the degree or level of proof required in court proceedings and administrative hearings. The standard of proof varies depending on the nature of the proceedings.~~

~~Related Procedure~~

~~Standards of Proof~~

~~Related Policy~~

~~Documenting the Results of Child Protective Investigations in RICHIST~~

~~Investigative Reports and Record Keeping~~

# Standards of Proof

## Procedure from Policy 500.0080: Standards of Proof

- A. ~~The Standard of Proof to Indicate a Report of Child Abuse or Neglect is a "preponderance of the evidence". This is defined as evidence of a greater weight or more convincing than the evidence in opposition to it; that is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.~~
- ~~1. The Child Protective Investigator (CPI) must continually weigh the reliability and importance of each piece of information received during the investigative process. This includes assessing the credibility of the statements of individuals interviewed during the investigation. To assess credibility, the CPI considers the:~~
    - ~~a. Opportunity of the witness to have seen, heard or known what he/she is telling the CPI.~~
    - ~~b. Logic, accuracy and consistency in the reporting of the witness and responses of the witness when confronted with any discrepancies.~~
    - ~~c. Behavior, manner and style of interaction of the witness, e.g., witness was/was not nervous; witness did/did not answer questions directly.~~
    - ~~d. Ability to corroborate the statements of the witness with other evidence (this does not preclude indicating a report based on the statement of one witness if the CPI believes the witness).~~
    - ~~e. Potential bias or hostility of the witness towards the CPI or the family being investigated.~~
    - ~~f. Competency level of witness to understand the truth and the ability to accurately express what was observed, especially with young children. Competency of a child witness need not be the sole factor in whether a case is indicated or unfounded.~~
  - ~~2. The documentation of the evidence gathered is an essential part of the investigation. The CPI accurately documents in conformance with DCYF Policy 500.0095, Documenting the Results of Child Protective Investigations in RICHIST and DCYF Policy 500.0110, Investigative Reports and Record Keeping.~~
    - ~~a. If allegation is indicated, the CPI documents how the evidence was weighed to reach a finding that the allegations are more likely true than not.~~
    - ~~b. CPI documents his/her own assessment of the credibility of witnesses.~~
    - ~~c. If relying on a qualified expert to base a decision, the CPI documents the level of expertise and weight placed on the qualified expert's testimony.~~
  - ~~3. Standard of Proof for Filing an Ex Parte Petition for Custody is evidence that a child suffered, or is likely to suffer, abuse or neglect and that there exists substantial risk that continued care and custody by the parent/person responsible for the child's care may result in further harm to the child.~~
- B. ~~Standard of Proof for a Probable Cause Hearing is defined as reasonable grounds to suspect that a child has been abused or neglected based on reliable facts and circumstances.~~
- ~~1. If a child has been removed from the home by an Ex Parte Detention Order, the parent's counsel may request a Probable Cause Hearing at the arraignment. Within ten days of the request, a hearing is held before the Family Court. At this hearing, the Department must show cause for the removal and for continuing to keep the child out of the home pending a trial on the merits.~~
  - ~~2. Credible hearsay is permitted at the discretion of the Court.~~
  - ~~3. Several types of evidence may be introduced to meet the standard of proof, including:~~



- a. ~~Reports from physicians or police.~~
- b. ~~Alleged elements of abuse and/or neglect.~~
- c. ~~Prior reports of abuse and/or neglect unless irrelevant because of passage of time or judgment of the Court.~~
- d. ~~Account of interviews conducted with the parent(s), child(ren), or others involved in the investigation.~~
- e. ~~CPI's observations.~~
- f. ~~Account of the Department's attempts, if possible, to maintain the child in the home.~~

C. ~~Standard of Proof for Trial (Dependency/Abuse/Neglect Petition or Termination of Parental Rights Petition) is "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 preponderance of the evidence but less than evidence beyond a reasonable doubt.~~

1. ~~The CPI and/or primary worker relies on certain documents and/or tangible evidence to prepare for his/her testimony and/or actual courtroom use including:~~
  - a. ~~Body Charts – outlining the injury.~~
  - b. ~~Color Photographs – depicting injury to child and/or home environment.~~
  - c. ~~X rays – showing current or pattern of previous injury.~~
  - d. ~~Medical Records – maintained by hospitals, treatment physicians, school doctors, public health nurses and other qualified medical professionals.~~
  - e. ~~Miscellaneous Records – mental health evaluations, school records, prior child abuse/neglect reports.~~
  - f. ~~Child Protective Services (CPS) Investigation documents/forms.~~
2. ~~The above evidence (1, a-f) must qualify as "business records" prior to their use at a trial:~~
  - a. ~~Made in the regular course of business of the hospital/agency.~~
  - b. ~~It was the regular course of business to make such record/document.~~
  - c. ~~Entries/documents made at or near time of transaction/event.~~
  - d. ~~Above (2, a-c) have been certified by the agency head/designee to be true.~~

D. ~~Standard of Proof for a Motion Hearing is a preponderance of the evidence (See definition above in Section A).~~

E. ~~Standard of Proof in a Termination of Parental Rights trial involving a child who is covered by the federal Indian Child Welfare Act is Beyond a Reasonable Doubt, which is the highest standard of proof.~~