

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Legal

REGULATION TITLE: Legal Proceedings

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Adoption

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice: July 10, 2018

End of Public Comment Period: August 10, 2018

SUMMARY OF PROPOSED RULE:

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

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

The proposed repealed rules above will be re-issued as DCYF Department Operating Procedures (DOPs) that will be available on the Department's website at:

<http://www.dcyf.ri.gov/policyregs/legal.htm?ms=AAAAAAAAAAAA%3D&st=MA%3D%3D&sct=NTq2Nw%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 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

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.

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 than 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.

Voluntary Placement

Rhode Island Department of Children, Youth and Families

Policy: ~~700.0015~~

~~Effective Date: July 9, 1984 Revised Date: January 5, 2004 Version: 5~~

~~Rhode Island General Law (RIGL) 42-72-14 allows the Department to accept a request for voluntary placement of a child if the child could benefit from foster care or residential treatment services. A voluntary placement may be initiated in situations outlined in the procedure with prior administrative approval when a parent or guardian consents to the out of home placement of a child. Voluntary placements are only used when precipitating problems are expected to be resolved within six 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. When out of home placement is necessary, the Department will first explore with a parent or guardian and, if appropriate, the child the possibility of placement with a relative caretaker.~~

~~The Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) specifies the child's legal status and outlines the rights and obligations of the parent(s) or guardian, the Department and the child while the child is in placement. In compliance with federal law [42 U.S.C. §672(g)(2)] and state law (RIGL 42-72-14), 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. The Department is required to petition the Family Court within 120 days of admitting a child on a voluntary basis to determine whether or not continued placement is in the child's best interest and, if so, whether or not there is an appropriate case plan. According to both federal and state law, the Family Court must conduct a hearing within 180 days of the voluntary placement of the child. The Adoption and Safe Families Act (P.L. 105-89) also requires that any child in voluntary placement be 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.~~

~~When any child, except a child with disabilities, remains in voluntary placement for a period of 12 months, the Department must petition the Family Court to request care, custody and control of the child in accordance with RIGL 14-1-11.1. The law does not require and 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. These services may~~

include, but are not limited to, residential treatment programs, residential counseling centers and therapeutic foster care programs.

~~RIGL 42-72-13 (Liability for Support of Committed Children) requires the Department, within its available appropriation, to pay 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. RIGL 15-9-1 allows the Department to seek reimbursement from the parents of children in placement.~~

~~Related Procedures~~

~~Voluntary Placement~~

Voluntary Placement

Procedure From Policy 700.0015: Voluntary Placement

A. ~~Voluntary Assessment and Approval Process~~

- ~~1. The primary worker thoroughly reviews the voluntary placement request and carefully assesses the problem and circumstances.~~
- ~~2. All reasonable efforts must be made, when possible and appropriate, to prevent placement:~~
 - ~~a. The primary worker/supervisor reviews and offers to the parent(s) appropriate Department and/or community or home-based services and resources as alternatives to placement.~~
 - ~~b. All preventive efforts must be documented in a Case Activity Note.~~
- ~~3. The primary worker assesses the nature and severity of the problem to determine if it is likely that placement and additional services will achieve successful reunification within six (6) months (except for children with disabilities).~~
- ~~4. The primary worker assesses the ability and willingness of the parent and child to work actively and cooperatively throughout the placement process and to follow through with an effective Case Plan. Voluntary placement may be considered in the following situations:~~
 - ~~a. Child Welfare Issues – There is suspicion of abuse and/or neglect but after a careful investigation by Child Protective Services and after consultation with Legal Counsel, it is determined that sufficient evidence does not exist to warrant a petition or the petition has been denied by Family Court.~~
 - ~~i. The parent(s) must be willing to participate in the voluntary placement process.~~
 - ~~ii. At times, the Department may use a voluntary placement as a protective service to a child pending filing or disposition of a dependent/neglected/abused petition.~~
 - ~~b. Children with Disabilities – The child requires foster or residential treatment due to emotional, behavioral or mental disorder or developmental or physical disability which is of an extended or indeterminate period and the parent is willing and able to participate in a treatment plan.~~
 - ~~c. Short-term Shelter Placement – The child is in need of respite/shelter care for a brief time period.~~
- ~~5. The primary worker discusses in supervision, and administrative approval (assistant administrator level or above) is obtained, prior to formalizing a Voluntary Application/Authorization/ Consent for Placement of Children or securing a placement and this is documented in a Case Activity Note.~~
- ~~6. The primary worker follows procedures for securing a shelter or longer term placement.~~
- ~~7. The primary worker reads and explains the terms of the Voluntary Application/ Authorization/Consent for Placement of Children (DCYF #023) to the parent(s) to ensure that parent(s) understands the rights and obligations. If the parent(s) does not speak and fully understand English, a translator is sought. The parent(s) is also informed of the~~

following:

- a. ~~The Department must petition Family Court within 120 days of the placement date to schedule a hearing to determine whether or not continued placement is in the best interest of the child and, if so, whether or not there is an appropriate case plan. This hearing must be held in Family Court within 180 days of the date of placement.~~
- b. ~~If the parent is unable or unwilling to participate in the educational decision making process of a child suspected or identified as having a handicapping condition, the child is referred for the appointment of an Educational Surrogate Parent.~~
- c. ~~Financial support by the parent is mandatory and is based on ability to pay. The Department seeks to become representative payee, effective as of the date of placement, for any state or federal subsidies or benefits the parent(s) receives on behalf of the child.~~

- d. ~~Children in voluntary placement are subject to the same provisions relating to administrative reviews, permanency hearings and time frames for permanency, including termination of parental rights, as all children in out of home placement.~~
- 8. ~~The non-custodial parent is notified of the voluntary placement unless it has been clearly established that the non-custodial parent would jeopardize the child's placement.~~
 - a. ~~The worker makes every effort to locate the non-custodial parent (e.g., parents separated/divorced).~~
 - b. ~~The non-custodial parent may have a potential impact on the visitation plan.~~
 - c. ~~The non-custodial parent can seek custody as an alternative to foster care.~~
- 9. ~~Two copies of the Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) are signed and dated by the primary worker or Departmental representative and by each custodial parent as well as the appropriate supervisor and administrator.~~
 - a. ~~One copy of the Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) is given to the parent(s) and one copy is filed in the case record.~~
 - b. ~~If the child has a disability or is suspected of having a disability, the parent(s) may not wish to participate in further educational decision-making. In these situations, a statement to this effect, via the Educational Participation Agreement (DCYF #062), must be signed by the parent(s) and must be attached to each copy of the Voluntary Application/ Authorization/ Consent for Placement of Children (DCYF #023).~~
- 10. ~~The worker must also secure the following signed forms prior to the removal of the child:~~
 - a. ~~Medical Consent Authorization (DCYF #003).~~
 - b. ~~Release of Confidential Information (DCYF #007) for medical records, school records, psychological records or any other information deemed necessary for the child's smooth transition into foster care.~~
- 11. ~~The primary worker records in Case Activity Notes, all discussions between parents and workers and circumstances regarding the voluntary placement agreement, specifically the following:~~
 - a. ~~Parent(s) reasons for requesting voluntary placement.~~
 - b. ~~Efforts to secure alternatives to placement.~~
 - c. ~~Time, place and manner of the discussions.~~
 - d. ~~Potential consequences of placement for both child and parent (including social, economic, legal and educational)~~
 - e. ~~Notification to the non-custodial parent.~~
 - f. ~~Conditions of the voluntary, including whether a petition is to be filed or is pending before the Court.~~
 - g. ~~Decision regarding appointment of an Educational Surrogate Parent when appropriate.~~
- 12. ~~A Case Plan outlining the objectives and tasks to be accomplished for reunification must be completed within the time frames stipulated in policy.~~
- 13. ~~The legal status is entered into RICHIST as voluntary.~~
- 14. ~~The worker regularly monitors the placement, maintains contact with the parent(s) and notifies the parent(s) of any change in worker and/or in the location, progress or condition of the child. This information must be documented in Case Activity Notes.~~

~~15. The worker, upon proper administrative consultation and approval, notifies the parent(s) in writing within a reasonable period of time of any decision to terminate the voluntary placement agreement. Such notification shall indicate that the child will either be returned home or that the Department is initiating legal action.~~

~~B. Legal Review Process~~

- ~~1. The worker meets with Legal Counsel before the child's 120th day in placement and presents a Summary of Facts to support a Miscellaneous Petition that will review the~~
~~circumstances of a child in voluntary placement when there is an expectation that the voluntary placement will continue to be necessary beyond 120 days.~~
- ~~2. The Office of Legal Counsel files a Miscellaneous Petition with the Court for review of the voluntary placement on or before the child's 120th day in placement. A copy of the~~

Miscellaneous Petition is forwarded to the Child Advocate's Office by the Office of Legal Counsel. A summons is issued to the parent named on the Miscellaneous Petition through the Juvenile Clerk's Office.

3. If there are any changes in circumstances between the interim period when the petition is filed and the review is scheduled, the worker notifies the Office of Legal Counsel of the change and also documents the change in a court letter.
4. A Family Court review of the voluntary placement must occur on or before the child's 180th day in voluntary placement.
5. The Court will conduct a Permanency Hearing for all children in voluntary placement within a period of 12 months from the date the child was voluntarily placed in the care of the Department. If a child continues to need placement and a TPR is not appropriate, the worker must complete the compelling reasons documentation, attach it to the case plan, and present it to the Court at the Permanency Hearing.
6. For children with disabilities, if the Court finds that the continuation in voluntary placement is in the best interest of the child, the Court has continuing jurisdiction to review and conduct further Permanency Hearings whenever it deems it necessary or desirable, but at least every 12 months. However, children with disabilities in voluntary placement are subject to the same requirements relating to administrative reviews, permanency hearings and time frames for permanency, including termination of parental rights, as all children in out of home placement.
 - a. There is no requirement that the Department file a dependency petition to seek care, custody, and control of a child with disabilities placed in the voluntary care of the Department for a period in excess of 12 months.
 - b. In certain circumstances the Department may justify a need to seek legal custody of a child with disabilities who has been voluntarily placed in the care of the Department through the filing of a dependency, neglect and/or abuse petition. In that event, the social worker confers with his or her supervisor and seeks a legal consult.
7. **For all children except those with disabilities, when placement is expected to continue beyond 12 months**, a petition seeking custody must be filed with the Family Court within and not exceeding 12 months from the date the child was voluntarily placed in the care of the Department. (Refer to Policy: 1100.000 Obtaining Custody of Child Through the Dependent/Neglected/ Abused Petition.).

~~Implementing the Indian Child Welfare Act~~

Rhode Island Department of Children, Youth and Families

Policy: 700.0170

~~Effective Date: April 10, 1989~~ ~~Revised Date: February 24, 2014~~ ~~Version: 4~~

The Rhode Island Department of Children, Youth and Families (DCYF) provides services to Indian families that are culturally relevant and consistent with the mandates of the Indian Child Welfare Act (ICWA) (PL 95-608). The Department utilizes the principles of family centered practice in its delivery of child welfare services and recognizes the importance of maintaining connections between children and their heritage. The Department supports early contact and active engagement with a child's tribe to ensure that services provided reflect the unique values of Indian culture and meet the safety, permanency and well-being requirements of the Adoption and Safe Families Act (ASFA) (PL 150-89).

ICWA provides protection for the rights of Indian children, families and tribes and sets guidelines for the individual states to follow in handling child welfare cases involving Indian children. It is the intent of the ICWA to serve the best interests of Indian children by strengthening Indian families and preserving the cultural identity of Indian children. ICWA further protects Indian children from removal from their tribes and assures that tribes are given the opportunity to raise Indian children when placement outside of the natural home is necessary. In compliance with state and federal law, the child's health, safety and well-being are the paramount concerns in making reasonable efforts towards reunification with parents or guardians.

~~Related Procedure~~

~~Implementing the Indian Child Welfare Act~~

~~Transfer of Placement and Care of Child to a Tribal IV-E Agency~~

~~Related Policies~~

~~Voluntary Placement~~

~~Termination of Parental Rights~~

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

~~Removal of Child from Home~~

~~Interstate Compact on the Placement of Children (ICPC)~~

~~Implementing the Indian Child Welfare Act~~

~~Procedure from Policy 700.0170: Implementing the Indian Child Welfare Act~~

- ~~A. It is important to determine if a child is of Indian descent as soon as possible after he/she becomes active with the Department to ensure that the child's best interests are considered in accordance with the ICWA.~~
- ~~1. Child Protective Services (CPS) Investigative Staff and Child Protective Intake Staff~~
- ~~a. During the preliminary stages of a CPS investigation, the Child Protective Investigator (CPI) inquires if there is any Indian heritage in the family. If the CPI is unable to gather this information, the Intake worker attempts to determine the background of the child when he/she receives the case.~~
- ~~b. If there is no Indian heritage, this information is documented by the Intake worker in RICHIST (refer to RICHIST Window Help: Case Maintenance). If the CPI has determined that there is Indian heritage, this information is forwarded to Intake. The CPI may proceed with emergency placement as needed (refer to RICHIST Window Help: Indian Child Welfare Checklist Window).~~
- ~~c. If there is Indian heritage, the following information is included in RICHIST (refer to RICHIST Window Help: Case Maintenance):~~
- ~~i. Indian child's name, date of birth and birthplace~~
- ~~ii. Parents' names (including mother's maiden name) or names of Indian custodian, dates of birth and birthplaces~~
- ~~iii. Indian child's tribal affiliation~~
- ~~d. Information contained in Subsection c. above is forwarded immediately to DCYF Legal Counsel. All necessary parties will be notified prior to any court proceedings by DCYF Legal Counsel.~~
- ~~i. Legal Counsel notifies the Indian child's parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.~~
- ~~ii. If parent and/or tribe is unknown, Legal Counsel notifies the Secretary of the Interior's Bureau of Indian Affairs by registered mail with return receipt requested.~~
- ~~iii. Legal Counsel forwards a copy of the applicable correspondence to the primary service worker. Primary service worker incorporates into the case record.~~
- ~~2. Family Service Unit and Probation Staff~~
- ~~a. If there is no documentation in the case record regarding a child's Indian heritage, the primary service worker inquires if there is any Indian heritage and follows procedures outlined above.~~
- ~~b. The primary service worker informs the family that they are entitled to rights and privileges in accordance with the ICWA.~~

B. ~~ICWA protects the rights of Indian children, families and tribes and sets guidelines for the individual states to follow in handling child welfare cases involving Indian children. Procedures outlined below are followed when there is a Family Court Hearing for the foster placement or the termination of parental rights (TPR) of an Indian child.~~

1. ~~Hearing for Voluntary Placement/TPR:~~

a. ~~If it has been determined that a child is of Indian descent and the parent(s) desires to voluntarily place the child, customary DCYF procedures (refer to DCYF Policy: 700.0015, Voluntary Placement) are followed with the addition of the following:~~

i. ~~Child must be at least ten days of age. If younger than ten days, consult DCYF Legal Counsel.~~

- ~~ii.~~—Parental request must be executed in writing at a Family Court Hearing and certified by the presiding Judge. Worker consults with DCYF Legal Counsel for protocol.
 - b.—If the parent of an Indian child desires to voluntarily terminate parental rights, customary Department procedures (refer to DCYF Policy: 1100.0020, Termination of Parental Rights) are followed with the addition of the following:
 - i.—Worker informs DCYF Legal Counsel that child is of Indian descent and discusses the appropriateness of the action. Legal Counsel will prepare the applicable documents for the procedure.
 - ii.—Parental request must be executed in writing at a Family Court Hearing. Consult with DCYF Legal Counsel for protocol.
 - 2.—Hearing for Involuntary Placement/TPR —In compliance with the ICWA, no foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of the notice of the pending proceedings by the parent or Indian custodian and the tribe or the Secretary of the Interior.
 - a.—The Court must be satisfied that placement/TPR is the last resort after all active efforts to maintain the child at home have failed.
 - b.—For involuntary placement, in compliance with the ICWA, the Department must prove with clear and convincing evidence, based on the testimony of expert witnesses that further care by the parent would result in serious emotional or physical damage to the child.
 - c.—For a TPR, in compliance with the ICWA, a determination must be made supported by evidence beyond a reasonable doubt, including testimony of a qualified witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - 3.—The Department makes every attempt to locate and engage absent parents and paternal relatives as critical partners in meeting the permanency needs of Indian children and youth. If a putative father notifies the Department that he may be the father of a child in care, steps must be taken to determine paternity (refer to DCYF Policy: 1100.0000, Obtaining Custody of Child through the Dependent/Neglected/Abused Petition).
- C.—Emergency Placement:
- 1.—If an Indian child is at risk of physical harm, he/she may be removed from the home on an emergency basis for his/her protection (refer to DCYF Policy: 500.0075, Removal of Child from Home).
 - 2.—As soon as the child is placed, the procedures regarding the placement of an Indian child must be followed (refer to RICHIST Window Help: Indian Child Welfare Checklist Window).
- D.—Placement of an Indian Child in a Placement Resource or Pre-adoptive Home
- 1.—Selection of a Placement Resource —Placement Unit staff attempt to

~~find a placement within a reasonable distance of the child's home and in the least restrictive environment to meet the special needs of the identified Indian child:~~

- ~~a. The Placement Unit's search for and selection of the placement occurs in conjunction with the tribe's representative in the following order of preference:~~
 - ~~i. A member of the Indian child's extended family;~~
 - ~~ii. A foster home licensed, approved or specified by the Indian child's tribe;~~
 - ~~iii. An Indian foster home licensed or approved by an authorized non-Indian licensing authority;~~

- iv. ~~— An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.~~
 - b. ~~— When no preferred placement is available as specified above, active efforts are made to place the Indian child with a family committed to enabling the child to have an extended family visitation and participate in the cultural, spiritual, religious, and ceremonial activities of the Indian child's tribe.~~
 - c. ~~— Deviation from the order of preference is made only when the Department can show good cause for such deviation and a final determination is made by the Tribe and sanctioned by the Family Court.~~
 - 2. ~~— Selection of an Adoptive Home~~
 - a. ~~— The search for and selection of the home occurs in conjunction with the tribe's representative in the following order of preference:
 - i. ~~— A member of the Indian child's extended family~~
 - ii. ~~— Other members of the Indian child's tribe~~
 - iii. ~~— Other Indian family~~
 - iv. ~~— Non-Indian family~~~~
 - b. ~~— Deviation from the order of preference is made only when the Department can show good cause for such deviation and a final determination is made by the Tribe and sanctioned by the Family Court.~~
 - E. ~~— The Department determines the child's eligibility in compliance with DCYF Policy 1000.0000: Federal Benefits for Children in DCYF Care prior to the transfer of placement and care responsibility to a Tribal title IV-E agency or Indian Tribe with a title IV-E agreement.~~
 - 1. ~~— The Department cooperates to support the transfer of placement and care responsibility to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in the same manner a child or youth would be transferred to another~~

~~state, in compliance with DCYF Policy 700.0060, Interstate Compact on the Placement of Children (ICPC).~~
 - 2. ~~— The Department ensures that an Indian child involved in a transfer retains his or her eligibility for title IV-E and Medicaid.~~
 - 3. ~~— The Department provides all essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid to the Tribal title IV-E agency or Indian Tribe with a title IV-E agreement.~~
 - a. ~~— Copies of all judicial determinations regarding contrary to the welfare and reasonable efforts are provided.~~
 - b. ~~— Department provides the Indian Tribe with any information that relates to the child's potential or actual eligibility for other Federal benefits.~~
 - 4. ~~— The Department provides the Indian Tribe with the child's case plan;~~

including health and educational records.

5. ~~The Department provides all information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.~~

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

Rhode Island Department of Children, Youth and Families

Policy: ~~1100.0000~~

Effective Date: ~~July 9, 1984~~ Revised Date: ~~July 31, 2012~~ Version: ~~8~~

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

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

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

~~The Department is mandated by RIGL 14-1-11.1 to seek commitment of any child who remains in voluntary placement for a period of 12 months. The exception is when a child with an emotional, behavioral or mental disorder or developmental or physical disability is~~

voluntarily placed with the Department to access an out-of-home program for children with disabilities, including residential treatment programs, residential counseling centers and therapeutic foster care in conformance with DCYF Policy 700.0015, Voluntary Placement.

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

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

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

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

Related Procedures

[Dependent/Neglected/Abused Petition](#)

[Arraignment or Initial Family Court Hearing and Probable Cause Hearing Trial](#)

[Court Involvement Related to Voluntary Placement Review and Motion Hearing](#)

[Permanency Hearing](#)

[Role of Guardian Ad Litem/CASA](#)

Related Policies

[Removal of Child from Home](#) [Voluntary Placement](#) [Standards of Proof](#) [Termination of Parental Rights](#)

Dependent/Neglected/Abused Petition

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

A. — The initiation and filing of the Dependent/Neglected Petition:

1. — The Department seeks to obtain custody of a child through the filing of a "straight" Dependent/Neglected petition when there is a need for Court action in a case but there is no imminent risk of harm to a child(ren). The primary worker discusses the situation and need for Court involvement with his/her supervisor.

2. — The primary worker and/or supervisor confer with Legal Counsel.

3. — If a decision is made to pursue legal action, the primary worker prepares and submits the following to Legal Counsel:

a. — Cover letter addressed to Chief Judge of the Family Court requesting the Court's acceptance of the petition based on the Summary of Facts.

b. — Summary of Facts to Substantiate Dependency, Neglect and/or Abuse.

c. — The summary should address services offered to or received by parents to prevent the need for removal.

d. — A list of proposed witnesses, including parents.

4. — Department Legal Counsel prepares the petition, reviews the summary and list of proposed witnesses and returns the petition to the primary worker who signs it in the presence of a notary.

5. — The primary worker files the cover letter, petition, summary and list of proposed witnesses with the Juvenile Clerk of the Family Court.

6. — The Juvenile Clerk oversees the following procedures:

a. — The Clerk signs and enters the petition.

b. — The case is assigned a hearing date for arraignment. The primary worker enters the assigned hearing date in the Court Activity Window immediately.

c. — Parent(s) are served with a summons to appear at the Family Court for arraignment or Notice by Publication is made in the newspaper in the area of last known address of a parent whose address is unknown. The petition may not proceed to trial until parent(s) are served or until there is Notice by Publication.

~~B. The initiation and filing of an Ex Parte Order of Detention and Dependent/Neglected/ Abused Petition:~~

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

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

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

~~A. — At the arraignment, the question before the Court is, "Does the parent(s) or other person(s) having custody of or legal responsibility for the child admit or deny the allegations in the petition that the child is dependent/neglected/abused?"~~

~~1. — If temporary custody is assigned to the Department and the child is placed out of the home of the parent(s) by Court order, a Probable Cause Hearing must be scheduled within ten days of a request for hearing by parent(s) or their counsel.~~

~~2. — The primary worker is prepared at arraignment to answer questions about:~~

~~a. — The child's current placement~~

~~b. — The availability of suitable relative caretakers as a placement resource~~

~~c. — Services offered to the parent(s) to prevent removal and services that will be offered to assist reunification~~

~~d. — Visitation plan~~

~~e. — If parents whereabouts are unknown, the last known addresses~~

~~f. — The reason why petitions may not have been filed on siblings~~

~~g. — Whether or not father's name is on birth certificate~~

~~B. — At the Probable Cause Hearing, the main question before the Court is, "Based upon as accurate and reliable information as possible, are there facts and circumstances that would justify a reasonable person to suspect that a child is abused or neglected?" The Court may also consider whether the child continues to need out of home placement even though probable cause existed at time of the child's removal.~~

~~1. — The Child Protective Investigator (CPI) and/or primary worker are often the sole witness at the hearing. The primary worker may use supporting documentation, such as emergency records, at this hearing.~~

~~2. — The Family Court Judge must find that there were reasonable grounds to warrant the Ex Parte removal of the child and that there are reasonable grounds to warrant the continued detention of a child pending a trial on the merits.~~

~~3. — The Family Court Judge determines if probable cause exists.~~

a. ~~—— If probable cause is found, the child is continued in the temporary custody of the Department (in placement) pending trial.~~

b. ~~—— If probable cause is not found, the child is returned to the custody of the parent(s). The primary worker and supervisor meet with Legal Counsel to reevaluate the basis for the petition and determine if or when the Department should withdraw the petition.~~

Trial

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

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

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

C. — Admissible Testimony:

1. — Witness's observations
2. — Factual and opinion testimony of expert witness
3. — Statements made by the parents prior to trial may be admissible
4. — Disclosures made by children age 12 and under regarding abuse or neglect may be admissible through another person to whom the child disclosed, if the statement was made under the following circumstances:
 - a. — Spontaneously, which can include answers to non-leading questions
 - b. — To a person the child would normally turn to for sympathy, protection or advice, which may include departmental staff who identify themselves and their role in protecting the child.
 - c. — Within a reasonable period of time after the abuse occurred, or at the first safe opportunity to disclose the abuse.
 - d. — Children's answers to direct, open-ended questions will often be admitted through the person who heard them when the circumstances in C a, b and c are met.

~~5. — Per RIGL 14-1-68 and RIGL 40-11-7.2, videotaped interviews or statements of victims of child abuse or neglect recorded by the Department, law enforcement officers, and hospitals may be admitted as evidence in Family Court proceedings at the discretion of the Family Court Judge. Certain criteria must be met prior to the admission of the videotaped interview as evidence.~~

~~6. — Records, photographs, and other documents may be admissible. A worker who is aware of such evidence informs the Legal Counsel of it prior to trial.~~

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

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

~~1. — The issues of placement and visitation are addressed.~~

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

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

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

Court Involvement Related to Voluntary Placement Procedure

from Policy 1100.0000: Obtaining Custody of Child Through the

Dependent/Neglected/Abused Petition

A. — Miscellaneous Petition

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

B. — Filing of a Dependent/Neglected/Abused Petition

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

but are not limited to residential treatment programs, residential counseling centers, and therapeutic foster care programs.

~~G. According to federal law (P.L. 105-89) and 42C.F.R.1356.21(b)(2)(i), any child in voluntary placement is subject to the same time frames for permanency, including permanency hearings and termination of parental rights, as for all children in out of home placement.~~

~~Review and Motion Hearings~~

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

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

~~B. — Standard of Proof in Motion Hearings:~~

~~1. — Motions require evidentiary hearings if the parties cannot agree on a resolution.~~

~~Sworn testimony is usually taken.~~

~~2. — The Rules of Evidence apply in motion hearings. Hearsay is not as freely admissible as it would be in a probable cause hearing. First hand witnesses may have to testify in support of the motion.~~

~~3. — The party who filed the motion must present proof by a fair preponderance of the evidence and must show a substantial change of circumstances from prior relevant court orders.~~

~~C. — One of the following outcomes may occur at the Motion Hearing:~~

~~1. — Custody, placement or visitation modified~~

~~2. — Other orders modified or amended~~

~~3. — Status quo maintained~~

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

~~E. — A court review is scheduled by the presiding Judge at the conclusion of the trial. The review is usually scheduled six months after this time. There may be circumstances which would warrant a hearing prior or subsequent to this interval:~~

- ~~1. At each subsequent review, the presiding Judge schedules the next review.~~
- ~~2. The Court also schedules a hearing upon the filing of a motion by any of the parties (DCYF Legal, GAL, CASA or parent's attorney). The Review or Motion Hearing can be used by any party to inform the Court that another party is not performing agreed upon tasks or to request changes.~~

~~F. Standard of Proof in Reviews:~~

- ~~1. The review is usually not an evidentiary hearing, so there usually is no formal taking of sworn testimony.~~
- ~~2. Hearsay and opinion are admissible. The Court hears all statements which may have bearing on the disposition even if it would be inadmissible at trial.~~
- ~~3. If the review is an evidentiary hearing, the standard of proof is fair preponderance of the evidence.~~

~~Permanency Hearing~~

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

~~A. — Permanency hearings are required in the following situations:~~

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

~~B. — Permanency Hearing~~

- ~~1. — Family Court considers at the permanency hearing whether the Department has made reasonable efforts to finalize the permanency plan that is in effect for a child. The child's health and safety is the paramount concern. The Primary worker prepares a report to the Family Court That addresses reasonable efforts including:~~
 - ~~a. — Appropriateness of the Department's plan for service to the child and parent~~
 - ~~b. — What reunification services have been offered~~
 - ~~c. — Efforts to evaluate another permanency goal considering in-State and out-of-State permanent placement options when reunification is not likely, and~~
 - ~~d. — Further efforts that have been or will be made to promote the child's best interests.~~
- ~~2. — In any permanency hearing held with respect to the child, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.~~
- ~~3. — The permanency hearing determines the services needed to assist a child who has attained age 16 with the transition from placement to living independently.~~

4. — The Family Court Judge must find that the Department has made reasonable efforts to finalize the permanency plan. Family Court makes explicit findings that include the permanent plan for the child, steps to be taken, time frames for accomplishing the goal and the date of the next hearing. The Family Court may approve or modify the plan presented by the Department and may incorporate the plan into orders of the Court.

5. — If the Court does not return the child to the care and custody of the parent, guardian or relative and the Court does not direct that foster care of the child and reunification efforts be continued, the Department institutes a proceeding within thirty (30) days of the permanency hearing pursuant to Chapter 7 of Title 15 to legally free the child for adoption.

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

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

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

~~Procedure from Policy 1100.0000: Obtaining Custody of Child Through the~~

~~Dependent/Neglected/Abused Petition~~

~~A. — A GAL or CASA is assigned to represent the interests of a child who is the subject of a Dependent/Neglected/Abused Petition. A GAL is an attorney who usually is experienced in juvenile law.~~

~~1. — A GAL is appointed in situations when there may be a conflict with the CASA office, such as, the when a minor represented by CASA has a child also who has legal involvement with the Department.~~

~~2. — A GAL can be appointed to represent the interests of a parent who the Court believes may have physical, emotional, or mental limitations which impair his/her abilities to make decisions regarding the best interests of the child and assist counsel in the presentation of the case.~~

~~B. — The Office of the Court Appointed Special Advocate, an arm of the Family Court, consists of attorneys knowledgeable in juvenile law, social workers and volunteers from the community.~~

~~1. — A volunteer, who is trained by the Office of CASA, may be appointed to assess the situation of a child. The Court allows the volunteer to contact all parties and to have access to Department and Family Court records.~~

~~2. — An attorney from the Office of CASA, in conjunction with the volunteer, is also appointed to each case. The attorney provides supervision and assistance to the volunteer in his/her efforts to make an accurate assessment and appropriate recommendations.~~

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.~~
- ~~1. 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.~~

~~Videotaping of Child Abuse and/or Neglect Victims~~

Rhode Island Department of Children, Youth and Families

Policy: 1100.0035

~~Effective Date: March 17, 1986 Version: 1~~

~~DCYF recognizes that a victim of child abuse and neglect differs significantly in his/her ability to cope with the stress and trauma of repeated questioning and extensive courtroom testimony. This is especially true of a sexual abuse victim. The Department has, therefore, instituted a procedure through which interviews or statements of those children who otherwise would risk additional emotional harm, can be recorded on videotape. The twofold intent of the Department in videotaping a child is to avoid unnecessary and/or repetitive interviews and, when possible, to use the videotape in lieu of at least a portion of the child's direct testimony in Family Court. Although the victim of sexual abuse will be the primary focus, videotapes, as necessary, will be made of any victim of child abuse or neglect. To be most effective, videotapes should be recorded at the earliest possible point in the Department's intervention.~~

~~The process for videotaping a child witness is now coordinated through the Rhode Island Children's Advocacy Center. The DCYF Chief Legal Counsel has primary responsibility to determine the Department's involvement in the videotaping process. If a worker contemplates the necessity for preserving testimony of a child by use of videotape, a legal consult must be requested immediately. The protocol designed by the Rhode Island Children's Advocacy Center shall be followed.~~

~~Several 1984-1985 legislative amendments to the general laws of the state (RIGL 11-37-13.1, 11-37-13.2, 14-1-68, and 40-11-7.2) make it possible to introduce into evidence videotaped interviews or statements (in some instances closed circuit televised testimony is permitted) of victims of child abuse and neglect in select civil and criminal court proceedings. While each amendment deals with a particular civil or criminal court proceeding, two (2) deal specifically with proceedings in Family Court (RIGL 14-1-68 and 40-11-7.2). If all specified prerequisites have been met, including having the child available for cross examination, each amendment allows for the introduction into evidence of videotaped interviews or statements recorded by the Department, law enforcement officers, and hospitals. Whenever possible, all efforts shall be made to coordinate such videotaping through the Department. However, whether the videotape is filmed by the Department or by someone else, it shall be the decision of the DCYF Chief Legal Counsel whether or not to introduce it into evidence in a Family Court proceeding in which the Department is the petitioner.~~

~~RIGL 11-37-13.1 and 11-37-13.2 each allow for the videotaped or closed circuit televised testimony of a child victim of sexual assault, recorded within prescribed guidelines by the Office of the Attorney General or at the direction of a presiding justice, to be introduced into evidence at a Grand Jury or at some other criminal court proceeding against the accused perpetrator. At times, a child under the jurisdiction of the Department may be asked or required to participate in such proceedings. While it is the overall intent of the Department to cooperate in such matters, the assigned Child Protective~~

~~Investigator/primary service worker must seek direction from the Chief Legal Counsel or his/her designee before allowing any child to be videotaped or otherwise recorded.~~

~~Related Procedure...~~

~~Videotaping of Child Abuse and/or Neglect Victims~~

~~Videotaping of Child Abuse and/or Neglect Victims~~

~~Procedure From Policy 1100.0035: Videotaping of Child Abuse and/or Neglect Victims~~

~~A. — Interviews or statements and videotapes of certain victims of child abuse or neglect shall be coordinated through the Rhode Island Children's Advocacy Center:~~

~~1. — The Chief Legal Counsel has primary responsibility to determine the Department's involvement in the videotaping:~~

~~a. — Although any victim of child abuse or neglect can be videotaped, victims of sexual abuse shall be the primary focus.~~

~~b. — Emphasis will be placed on those children who would risk additional emotional harm if required to undergo repeated questioning and/or extensive courtroom testimony.~~

~~c. — Other factors to consider include: the child's age, the child's present emotional state, the seriousness and/or extent of the alleged abuse or neglect, the child's ability to clearly relate the facts if pressured and the child's ability to clearly distinguish between lies and truth.~~

~~2. — The Interview Protocol for the Rhode Island Children's Advocacy Center provides that:~~

~~a. — A team, meeting at the Rhode Island Children's Advocacy Center, consisting of a police investigator, a DCFY representative, a victim witness representative and a prosecutor, will be present to monitor the interview of the child.~~

~~b. — Prior to the interview the team, outside the presence of the child, will exchange information and decide who should conduct the interview.~~

~~c. — The caretaker of the child would then join the meeting and the person selected to conduct the interview will explain the nature of the interview and get additional disclosures, what child has been told about the interview, language to be used, and how to help the child through the process.~~

~~d. — It is the policy of the Rhode Island Children's Advocacy Center that the caretaker may not be present during the interview.~~

~~e. — The child will meet with the interviewer for rapport building, and the interviewer will decide whether the child will be able to disclose that day. If so, the interviewer will elicit a brief summary from the child. At that point, the prosecutor will decide whether the interview should be videotaped, and, if so, tell the child that the camera is being turned on.~~

~~B. — Before the video can be used in any court proceeding, the child's competency must be demonstrated, i.e. that child understands importance of telling truth and what this means.~~

~~C. — Where possible, the videotape shall be used in lieu of all or at least a portion of the child's direct testimony in court. Two (2) 1984-1985 legislative amendments to the general laws of the state (RIGL 14-1-68 and 40-11-7.2) make it possible to introduce into evidence in Family Court proceedings videotaped interviews or statements of child abuse or neglect victims which were recorded by the Department, law enforcement officers, or hospitals:~~

~~1. — Before a videotape can be introduced into evidence in Family Court, the Court must determine the following:~~

~~a. — The statement is sworn to under oath by the child, and the significance of the oath is explained to the child.~~

~~b. — The recording is both visual and aural and is recorded on film or videotape or by other electronic means.~~

~~c. — The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered.~~

~~d. — Every voice on the recording is identified.~~

~~e. — The statement was not made in response to questioning calculated to lead the child to make a particular statement.~~

~~f. — The person conducting the interview of the child is available to testify at any court proceeding.~~

~~g. — The child shall be available to testify at any court proceeding.~~

~~2. — The videotape may be admissible in any Family Court proceeding, even if statements contained within are objected to as hearsay, as long as the value of its contents outweighs any unfair prejudice against the parents, guardians, or others responsible for the child's welfare as determined by the presiding Family Court Judge.~~

~~D. — Two legislative amendments (RIGL 11-37-13.1 and 11-37-13.2) allow for the videotaped or closed circuit televised testimony of a certain child victims of sexual assault, recorded within prescribed guidelines by the Office of the Attorney General or at the direction of a presiding justice, to be introduced into evidence at a Grand Jury or at some other criminal court proceeding against the accused perpetrator. If the child is under the jurisdiction of the Department, the following procedure shall be followed:~~

~~1. — The Department shall make every effort to comply with such requests when in the best interest of the child.~~

~~2. — The assigned Child Protective Investigator/primary service worker shall immediately consult with the Chief Legal Counsel upon receipt of such requests.~~

~~3. — It is the responsibility of the Chief Legal Counsel or his/her designee to decide on exactly how the Department will respond to each request.~~

Voluntary Placement

Rhode Island Department of Children, Youth and Families

Policy: 700.0015

~~Effective Date: July 9, 1984 Revised Date: January 5, 2004 Version: 5~~

~~Rhode Island General Law (RIGL) 42-72-14 allows the Department to accept a request for voluntary placement of a child if the child could benefit from foster care or residential treatment services. A voluntary placement may be initiated in situations outlined in the procedure with prior administrative approval when a parent or guardian consents to the out of home placement of a child. Voluntary placements are only used when precipitating problems are expected to be resolved within six 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. When out of home placement is necessary, the Department will first explore with a parent or guardian and, if appropriate, the child the possibility of placement with a relative caretaker.~~

~~The Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) specifies the child's legal status and outlines the rights and obligations of the parent(s) or guardian, the Department and the child while the child is in placement. In compliance with federal law [42 U.S.C. §672(g)(2)] and state law (RIGL 42-72-14), 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. The Department is required to petition the Family Court within 120 days of admitting a child on a voluntary basis to determine whether or not continued placement is in the child's best interest and, if so, whether or not there is an appropriate case plan. According to both federal and state law, the Family Court must conduct a hearing within 180 days of the voluntary placement of the child. The Adoption and Safe Families Act (P.L. 105-89) also requires that any child in voluntary placement be 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.~~

~~When any child, except a child with disabilities, remains in voluntary placement for a period of 12 months, the Department must petition the Family Court to request care, custody and control of the child in accordance with RIGL 14-1-11.1. The law does not require and 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. These services may include, but are not limited to, residential treatment programs, residential counseling centers and therapeutic foster care programs.~~

~~RIGL 42-72-13 (Liability for Support of Committed Children) requires the Department, within its available appropriation, to pay 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. RIGL 15-9-1 allows the Department to seek reimbursement from the parents of children in placement.~~

Related Procedures

Voluntary Placement

Voluntary Placement

Procedure From Policy 700.0015: Voluntary Placement

~~A. Voluntary Assessment and Approval Process~~

- ~~1. The primary worker thoroughly reviews the voluntary placement request and carefully assesses the problem and circumstances.~~
- ~~2. All reasonable efforts must be made, when possible and appropriate, to prevent placement:~~
 - ~~a. The primary worker/supervisor reviews and offers to the parent(s) appropriate Department and/or community or home-based services and resources as alternatives to placement.~~
 - ~~b. All preventive efforts must be documented in a Case Activity Note.~~
- ~~3. The primary worker assesses the nature and severity of the problem to determine if it is likely that placement and additional services will achieve successful reunification within six (6) months (except for children with disabilities).~~
- ~~4. The primary worker assesses the ability and willingness of the parent and child to work actively and cooperatively throughout the placement process and to follow through with an effective Case Plan. Voluntary placement may be considered in the following situations:~~
 - ~~a. Child Welfare Issues—There is suspicion of abuse and/or neglect but after a careful investigation by Child Protective Services and after consultation with Legal Counsel, it is determined that sufficient evidence does not exist to warrant a petition or the petition has been denied by Family Court.~~
 - ~~i. The parent(s) must be willing to participate in the voluntary placement process.~~
 - ~~ii. At times, the Department may use a voluntary placement as a protective service to a child pending filing or disposition of a dependent/neglected/abused petition.~~
 - ~~b. Children with Disabilities—The child requires foster or residential treatment due to emotional, behavioral or mental disorder or developmental or physical disability which is of an extended or indeterminate period and the parent is willing and able to participate in a treatment plan.~~
 - ~~c. Short-term Shelter Placement—The child is in need of respite/shelter care for a brief time period.~~
- ~~5. The primary worker discusses in supervision, and administrative approval (assistant administrator level or above) is obtained, prior to formalizing a Voluntary Application/Authorization/ Consent for Placement of Children or securing a placement and this is documented in a Case Activity Note.~~
- ~~6. The primary worker follows procedures for securing a shelter or longer term placement.~~
- ~~7. The primary worker reads and explains the terms of the Voluntary Application/ Authorization/Consent for Placement of Children (DCYF #023) to the parent(s) to ensure that parent(s) understands the rights and obligations. If the parent(s) does not speak and fully understand English, a translator is sought. The parent(s) is also informed of the following:~~
 - ~~a. The Department must petition Family Court within 120 days of the placement date to schedule a hearing to determine whether or not continued placement is in the best interest of the child and, if so, whether or not there is an appropriate case plan. This hearing must be held in Family Court within 180 days of the date of placement.~~
 - ~~b. If the parent is unable or unwilling to participate in the educational decision making process of a child suspected or identified as having a handicapping condition, the child is referred for the appointment of an Educational Surrogate Parent.~~

c. ~~Financial support by the parent is mandatory and is based on ability to pay. The Department seeks to become representative payee, effective as of the date of placement, for any state or federal subsidies or benefits the parent(s) receives on behalf of the child.~~

- d. — Children in voluntary placement are subject to the same provisions relating to administrative reviews, permanency hearings and time frames for permanency, including termination of parental rights, as all children in out of home placement.
8. — The non-custodial parent is notified of the voluntary placement unless it has been clearly established that the non-custodial parent would jeopardize the child's placement.
 - a. — The worker makes every effort to locate the non-custodial parent (e.g., parents separated/divorced).
 - b. — The non-custodial parent may have a potential impact on the visitation plan.
 - c. — The non-custodial parent can seek custody as an alternative to foster care.
9. — Two copies of the Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) are signed and dated by the primary worker or Departmental representative and by each custodial parent as well as the appropriate supervisor and administrator.
 - a. — One copy of the Voluntary Application/Authorization/Consent for Placement of Children (DCYF #023) is given to the parent(s) and one copy is filed in the case record.
 - b. — If the child has a disability or is suspected of having a disability, the parent(s) may not wish to participate in further educational decision-making. In these situations, a statement to this effect, via the Educational Participation Agreement (DCYF #062), must be signed by the parent(s) and must be attached to each copy of the Voluntary Application/ Authorization/ Consent for Placement of Children (DCYF #023).
10. — The worker must also secure the following signed forms prior to the removal of the child:
 - a. — Medical Consent Authorization (DCYF #003).
 - b. — Release of Confidential Information (DCYF #007) for medical records, school records, psychological records or any other information deemed necessary for the child's smooth transition into foster care.
11. — The primary worker records in Case Activity Notes, all discussions between parents and workers and circumstances regarding the voluntary placement agreement, specifically the following:
 - a. — Parent(s) reasons for requesting voluntary placement.
 - b. — Efforts to secure alternatives to placement.
 - c. — Time, place and manner of the discussions.
 - d. — Potential consequences of placement for both child and parent (including social, economic, legal and educational)
 - e. — Notification to the non-custodial parent.
 - f. — Conditions of the voluntary, including whether a petition is to be filed or is pending before the Court.
 - g. — Decision regarding appointment of an Educational Surrogate Parent when appropriate.
12. — A Case Plan outlining the objectives and tasks to be accomplished for reunification must be completed within the time frames stipulated in policy.
13. — The legal status is entered into RICHIST as voluntary.
14. — The worker regularly monitors the placement, maintains contact with the parent(s) and notifies the parent(s) of any change in worker and/or in the location, progress or condition of the child. This information must be documented in Case Activity Notes.
15. — The worker, upon proper administrative consultation and approval, notifies the parent(s) in writing within a reasonable period of time of any decision to terminate the voluntary placement agreement. Such notification shall indicate that the child will either be returned home or that the Department is initiating legal action.

B. — Legal Review Process

1. — The worker meets with Legal Counsel before the child's 120th day in placement and presents a Summary of Facts to support a Miscellaneous Petition that will review the

circumstances of a child in voluntary placement when there is an expectation that the voluntary placement will continue to be necessary beyond 120 days.

2. The Office of Legal Counsel files a Miscellaneous Petition with the Court for review of the voluntary placement on or before the child's 120th day in placement. A copy of the

Miscellaneous Petition is forwarded to the Child Advocate's Office by the Office of Legal Counsel. A summons is issued to the parent named on the Miscellaneous Petition through the Juvenile Clerk's Office.

3. — If there are any changes in circumstances between the interim period when the petition is filed and the review is scheduled, the worker notifies the Office of Legal Counsel of the change and also documents the change in a court letter.

4. — A Family Court review of the voluntary placement must occur on or before the child's 180th day in voluntary placement.

5. — The Court will conduct a Permanency Hearing for all children in voluntary placement within a period of 12 months from the date the child was voluntarily placed in the care of the Department. If a child continues to need placement and a TPR is not appropriate, the worker must complete the compelling reasons documentation, attach it to the case plan, and present it to the Court at the Permanency Hearing.

6. — For children with disabilities, if the Court finds that the continuation in voluntary placement is in the best interest of the child, the Court has continuing jurisdiction to review and conduct further Permanency Hearings whenever it deems it necessary or desirable, but at least every 12 months. However, children with disabilities in voluntary placement are subject to the same requirements relating to administrative reviews, permanency hearings and time frames for permanency, including termination of parental rights, as all children in out of home placement.

a. — There is no requirement that the Department file a dependency petition to seek care, custody, and control of a child with disabilities placed in the voluntary care of the Department for a period in excess of 12 months.

b. — In certain circumstances the Department may justify a need to seek legal custody of a child with disabilities who has been voluntarily placed in the care of the Department through the filing of a dependency, neglect and/or abuse petition. In that event, the social worker confers with his or her supervisor and seeks a legal consult.

7. — **For all children except those with disabilities, when placement is expected to continue beyond 12 months,** a petition seeking custody must be filed with the Family Court within and not exceeding 12 months from the date the child was voluntarily placed in the care of the Department. (Refer to Policy: 1100.000 Obtaining Custody of Child Through the Dependent/Neglected/ Abused Petition.)

**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.~~