

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

Rhode Island Department of Children, Youth and Families

Policy: 1100.0000

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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.

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Dependent/Neglected/Abused Petition

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

- A. The initiation and filing of the Dependent/Neglected Petition:
1. The Department seeks to obtain custody of a child through the filing of a "straight" Dependent/Neglected petition when there is a need for Court action in a case but there is no imminent risk of harm to a child(ren). The primary worker discusses the situation and need for Court involvement with his/her supervisor.
 2. The primary worker and/or supervisor confer with Legal Counsel.
 3. If a decision is made to pursue legal action, the primary worker prepares and submits the following to Legal Counsel:
 - a. Cover letter addressed to Chief Judge of the Family Court requesting the Court's acceptance of the petition based on the Summary of Facts.
 - b. Summary of Facts to Substantiate Dependency, Neglect and/or Abuse.
 - c. The summary should address services offered to or received by parents to prevent the need for removal.
 - d. A list of proposed witnesses, including parents.
 4. Department Legal Counsel prepares the petition, reviews the summary and list of proposed witnesses and returns the petition to the primary worker who signs it in the presence of a notary.
 5. The primary worker files the cover letter, petition, summary and list of proposed witnesses with the Juvenile Clerk of the Family Court.
 6. The Juvenile Clerk oversees the following procedures:
 - a. The Clerk signs and enters the petition.
 - b. The case is assigned a hearing date for arraignment. The primary worker enters the assigned hearing date in the Court Activity Window immediately.
 - c. Parent(s) are served with a summons to appear at the Family Court for arraignment or Notice by Publication is made in the newspaper in the area of last known address of a parent whose address is unknown. The petition may not proceed to trial until parent(s) are served or until there is Notice by Publication.
- B. The initiation and filing of an Ex Parte Order of Detention and Dependent/Neglected/Abused Petition:
1. The Department seeks an Ex Parte Order of Detention to immediately remove a child from his/her parent(s) when the child has suffered abuse or neglect and/or is in imminent danger of further physical or emotional harm.
 2. The Detention Order allows the Department to maintain a child in care pending a trial for custody or a Probable Cause Hearing.
 3. When a Family Court Judge signs an order contained with the Affidavit in Support of Ex Parte, the Department is awarded temporary custody of the child, and the arraignment is scheduled to be held within seven days (refer to [DCYF Policy 500.0075 Removal of Child from Home](#)).

Arraignment or Initial Family Court Hearing and Probable Cause Hearing

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

- A. At the arraignment, the question before the Court is, "Does the parent(s) or other person(s) having custody of or legal responsibility for the child admit or deny the allegations in the petition that the child is dependent/neglected/abused?"
1. If temporary custody is assigned to the Department and the child is placed out of the home of the parent(s) by Court order, a Probable Cause Hearing must be scheduled within ten days of a request for hearing by parent(s) or their counsel.
 2. The primary worker is prepared at arraignment to answer questions about:
 - a. The child's current placement
 - b. The availability of suitable relative caretakers as a placement resource
 - c. Services offered to the parent(s) to prevent removal and services that will be offered to assist reunification
 - d. Visitation plan
 - e. If parents whereabouts are unknown, the last known addresses
 - f. The reason why petitions may not have been filed on siblings
 - g. Whether or not father's name is on birth certificate
- B. At the Probable Cause Hearing, the main question before the Court is, "Based upon as accurate and reliable information as possible, are there facts and circumstances that would justify a reasonable person to suspect that a child is abused or neglected?" The Court may also consider whether the child continues to need out of home placement even though probable cause existed at time of the child's removal.
1. The Child Protective Investigator (CPI) and/or primary worker are often the sole witness at the hearing. The primary worker may use supporting documentation, such as emergency records, at this hearing.
 2. The Family Court Judge must find that there were reasonable grounds to warrant the Ex Parte removal of the child and that there are reasonable grounds to warrant the continued detention of a child pending a trial on the merits.
 3. The Family Court Judge determines if probable cause exists.
 - a. If probable cause is found, the child is continued in the temporary custody of the Department (in placement) pending trial.
 - b. If probable cause is not found, the child is returned to the custody of the parent(s). The primary worker and supervisor meet with Legal Counsel to reevaluate the basis for the petition and determine if or when the Department should withdraw the petition.

Trial

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

- A. The question before the Court is, "Are the allegations contained in the petition supported by clear and convincing evidence?" This means evidence that indicates that the thing to be proved is highly probable or reasonably certain. This is a greater burden than the preponderance of the evidence but not as great as beyond a reasonable doubt. The judge must form a clear conviction without hesitancy of the truth of the precise facts.
- B. The petitioning agency has the burden of proving that the child is in fact dependent, neglected, and/or abused and is in need of the protection of the Court. The State must show that conditions of abuse, neglect and/or dependency that exist in the parent/child relationship are those defined in RIGL chapters 14-1 and/or 40-11.
- C. Admissible Testimony:
1. Witness's observations
 2. Factual and opinion testimony of expert witness
 3. Statements made by the parents prior to trial may be admissible
 4. Disclosures made by children age 12 and under regarding abuse or neglect may be admissible through another person to whom the child disclosed, if the statement was made under the following circumstances:
 - a. Spontaneously, which can include answers to non-leading questions
 - b. To a person the child would normally turn to for sympathy, protection or advice, which may include departmental staff who identify themselves and their role in protecting the child.
 - c. Within a reasonable period of time after the abuse occurred, or at the first safe opportunity to disclose the abuse.
 - d. Children's answers to direct, open ended questions will often be admitted through the person who heard them when the circumstances in C a, b and c are met.
 5. Per RIGL 14-1-68 and RIGL 40-11-7.2, videotaped interviews or statements of victims of child abuse or neglect recorded by the Department, law enforcement officers, and hospitals may be admitted as evidence in Family Court proceedings at the discretion of the Family Court Judge. Certain criteria must be met prior to the admission of the videotaped interview as evidence.
 6. Records, photographs, and other documents may be admissible. A worker who is aware of such evidence informs the Legal Counsel of it prior to trial.
- D. If the State is unable to prove its case by clear and convincing evidence, the petition is dismissed unless the Department requests and is granted a stay pending appeal to the Rhode Island Supreme Court. Upon dismissal, the Department ceases to be involved with the family unless the family agrees to services.
- E. If the Judge finds the child dependent, neglected, and/or abused, the child is generally committed to the care, custody, and control of the Department:
1. The issues of placement and visitation are addressed.
 2. The Judge sets a date for the Department to submit a service plan to the Court. When the service plan is presented to the Court, it is entered into the Court file and is made an order of the Court. This will become important evidence if a petition is later filed for Termination of Parental Rights in conformance with [DCYF Policy 1100.0020, Termination of Parental Rights.](#)
- F. If the Department proves the allegations in its petition, the parent has the right to appeal the trial judge's findings and decisions to the Rhode Island Supreme Court.

Court Involvement Related to Voluntary Placement

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

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

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

- C. According to federal law (P.L. 105-89) and 42C.F.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.