

<b>Rhode Island Department of Children, Youth and Families Department Operating Procedure</b>			
	DOP Number: <b>500.0080</b>	Effective Date: <b>January 10, 2018</b>	Page 1 of 3
	Version #:5	Revision History: <b>July 7, 1984 V.1 December 9, 2011 V.4</b>	Director:
Section: <b>Child Abuse/Neglect Investigations</b>		Title: <b>Standards of Proof</b>	
Legal Authority:			
<ul style="list-style-type: none"> <li>• Rhode Island General Law §40-11-2</li> <li>• Rhode Island General Law §40-11-7</li> </ul>			
Related DOPs:			
<ul style="list-style-type: none"> <li>• Documenting the Results of Child Protective Investigations in RICHIST</li> <li>• Investigative Reports and Record Keeping</li> </ul>			
Related Forms:			
<ul style="list-style-type: none"> <li>• n/a</li> </ul>			

## I. PURPOSE

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

## II. TERMS DEFINED

## III. PROCEDURE

- A. The Standard of Proof to Indicate a Report of Child Abuse or Neglect is a "preponderance of the evidence". This is defined as evidence of a greater weight or more convincing than the evidence in opposition to it; that is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.
1. The Child Protective Investigator (CPI) must continually weigh the reliability and importance of each piece of information received during the investigative process. An investigation is not terminated solely because the source of the allegation recants.
  2. This includes assessing the credibility of the statements of individuals interviewed during the investigation. To assess credibility, the CPI considers the:
    - a. Opportunity of the witness to have seen, heard or known what he/she is telling the CPI.
    - b. Logic, accuracy and consistency in the reporting of the witness and responses of the witness when confronted with any discrepancies.
    - c. Behavior, manner and style of interaction of the witness, e.g., witness was/was not nervous; witness did/did not answer questions directly.

- d. Ability to corroborate the statements of the witness with other evidence (this does not preclude indicating a report based on the statement of one witness if the CPI believes the witness).
  - e. Potential bias or hostility of the witness towards the CPI or the family being investigated.
  - f. Competency level of witness to understand the truth and the ability to accurately express what was observed, especially with young children. Competency of a child witness need not be the sole factor in whether a case is indicated or unfounded.
  - g. Alleged victim, perpetrator, or witness on an individualized basis and not solely by the individual's status, such as status as resident or staff in an investigation of institutional abuse.
3. The documentation of the evidence gathered is an essential part of the investigation. The CPI accurately documents in conformance with [DOP 500.0095: Documenting the Results of Child Protective Investigations in RICHIST](#) and [DOP Policy 500.0110, Investigative Reports and Record Keeping](#).
- a. If allegation is indicated, the CPI documents how the evidence was weighed to reach a finding that the allegations are more likely true than not.
  - b. CPI documents his/her own assessment of the credibility of witnesses.
  - c. If relying on a qualified expert to base a decision, the CPI documents the level of expertise and weight placed on the qualified expert's testimony.
4. Standard of Proof for Filing an Ex Parte Petition for Custody is evidence that a child suffered, or is likely to suffer, abuse or neglect and that there exists substantial risk that continued care and custody by the parent/person responsible for the child's care may result in further harm to the child.
- B. Standard of Proof for a Probable Cause Hearing is defined as reasonable grounds to suspect that a child has been abused or neglected based on reliable facts and circumstances.
- 1. If a child has been removed from the home by an Ex Parte Detention Order, the parent's counsel may request a Probable Cause Hearing at the arraignment. Within 10 days of the request, a hearing is held before the Family Court. At this hearing, the Department must show cause for the removal and for continuing to keep the child out of the home pending a trial on the merits.
  - 2. Credible hearsay is permitted at the discretion of the Court.
  - 3. Several types of evidence may be introduced to meet the standard of proof, including:
    - a. Reports from physicians or police.
    - b. Alleged elements of abuse and/or neglect.
    - c. Prior reports of abuse and/or neglect unless irrelevant because of passage of time or judgment of the Court.
    - d. Account of interviews conducted with the parent(s), child(ren), or others involved in the investigation.
    - e. CPI's observations.
    - f. Account of the Department's attempts, if possible, to maintain the child in the home.
- C. Standard of Proof for Trial (Dependency/Abuse/Neglect Petition or Termination of Parental Rights Petition) is "clear and convincing" evidence. This means evidence that indicates that the thing to be proved is highly probable or

reasonably certain. This is a greater burden than preponderance of the evidence but less than evidence beyond a reasonable doubt.

1. The CPI and/or primary worker relies on certain documents and/or tangible evidence to prepare for his/her testimony and/or actual courtroom use including:
    - a. Body Charts - outlining the injury.
    - b. Color Photographs - depicting injury to child and/or home environment.
    - c. X-rays - showing current or pattern of previous injury.
    - d. Medical Records - maintained by hospitals, treatment physicians, school doctors, public health nurses and other qualified medical professionals.
    - e. Miscellaneous Records - mental health evaluations, school records, prior child abuse/neglect reports.
    - f. Child Protective Services (CPS) Investigation documents/forms.
  2. The above evidence (1, a-f) must qualify as "business records" prior to their use at a trial:
    - a. Made in the regular course of business of the hospital/agency.
    - b. It was the regular course of business to make such record/document.
    - c. Entries/documents made at or near time of transaction/event.
    - d. Above (2, a-c) have been certified by the agency head/designee to be true.
- D. Standard of Proof for a Motion Hearing is a preponderance of the evidence (See definition above in Section A).
- E. Standard of Proof in a Termination of Parental Rights trial involving a child who is covered by the federal Indian Child Welfare Act is Beyond a Reasonable Doubt, which is the highest standard of proof.