

# Child Advocacy in Rhode Island

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A GUIDE TO THE RHODE ISLAND FAMILY COURT AND  
CHILD WELFARE SYSTEM

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# **1 DEFINING THE PROBLEM**

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## **1.1 THE NATIONAL PROBLEM**

Between 2006 and 2012, the number and rate of maltreated children declined each year. After 2012, the number began to rise and, in 2014, there were approximately 702,000 maltreated children in the United States. (These data reflect states' definitions of what constitutes maltreatment, and the definitions vary by state and change over time).<sup>i</sup>

In 2011, 41.2% of children aged 12 to 17 were physically assaulted in the previous 12 months. Of children aged 14 to 17, 69.7% had been assaulted, 41.2% had been maltreated, and 27.4% had been sexually victimized at some point in their life.<sup>ii</sup>

## **1.2 THE NATIONAL SYSTEM**

As of the last day of the fiscal year of 2014, approximately 415,000 children in the United States were in foster care, following a downward trend in the number of children in foster care. New data suggests this number is on the rise again. In 2014, the rate of foster care entry ranged across the states from 1.5-9.8 children per 1,000 children, with the median being 3.5 children per 1,000 children in the population. In 2014, 238,000 children exited foster care nationally, 55% of which was due to reunification, 20.9% of which was due to adoption, and 9% of which was due to emancipation.<sup>iii</sup>

## **1.3 THE RHODE ISLAND PROBLEM**

From 2010 to 2014, the percent of child victims in Rhode Island rose 4.3%, from 3,268 to 3,410. In 2014, the rate per 1,000 children was 16 out of 1,000 children. From 2010 to 2013, the number of child fatalities ranged from 1-3 fatalities per year. In 2014, that number rose dramatically to 6 child fatalities.<sup>iv</sup> From 2012 to 2016, the percent of child victims in Rhode Island decreased by 8.2%, from 3,218 to 2,955. In 2016, the rate of child victims per 1000 children in Rhode Island was 14.2. In 2015, no child fatalities were reported, and in 2016, 4 child fatalities were reported.<sup>v</sup>

On October 1, 2014, 1,438 children in Rhode Island were in foster care. This number rose to 1,842 on September 30, 2015 with the average length of stay in foster care at 12.2 months.<sup>vi</sup>

# **2 DEFINING THE SOLUTION**

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## **2.1 NATIONAL EFFORTS**

### **2.1.1 The Social Security Act of 1935**

Under Title V of the Social Security Act of 1935, the Children's Bureau was given responsibility for maternal and child health, services for disabled children, and child welfare services. The Children's Bureau worked with States to develop plans for the use of funds to create or improve child welfare services, in addition to reviewing proposed State legislation.<sup>vii</sup>

### **2.1.2 Child Abuse Prevention and Treatment Act (CAPTA) of 1974**

CAPTA supports the state power to assume a quasi-parental role under the doctrine of parents patriae. CAPTA provides Federal funding to States in support of prevention, assessment, investigation, prosecution and treatment activities for child welfare.<sup>viii</sup>

### **2.1.3 Adoption Assistance and Child Welfare Act of 1980**

The purpose of the Adoption Assistance and Child Welfare Act of 1980 was to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, and to improve the child welfare, social services, and aid to families with various programs for dependent children. The act required states to make “reasonable efforts” to prevent the removal of children from their homes, and return those who were removed as soon as possible, establishing reunification programs and preventive programs for children in foster care.<sup>ix</sup>

### **2.1.4 Adoption and Safe Families Act of 1997 (ASFA)**

The act was enacted in response to concerns that many children were remaining in foster care for long periods of time and experiencing multiple placements. The Act requires timely permanency planning for children and emphasizes safety.<sup>x</sup>

### **2.1.5 Every Student Succeeds Act of 2015 (ESSA)**

ESSA replaces the No Child Left Behind Act (NCLB) of 2002. ESSA was instituted with the hope that it would ensure success for students and schools. The law advances equity by upholding protections for America’s disadvantaged and high-need students, requires all students be taught to high academic standards to prepare them for success in college and careers, ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure student progress toward high standards, and more.

### **2.1.6 Comprehensive Addiction and Recovery Act of 2016 (CARA)**

CARA is the most recent amendment to CAPTA. CARA modified state plan requirements for infants with Fetal Alcohol Spectrum Disorder or identified as being affected by substance abuse or withdrawal systems, adding criteria to ensure the safety and well-being of infants following their release from the hospital. CARA hopes to address health and substance abuse treatment for the infant and the affected family member, and requires states to develop plans of safe care for infants affected by all substance abuse, not just illegal substance abuse.<sup>xi</sup>

## **3 A PROFILE OF THE SYSTEM**

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### **3.1 THE DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES (DCYF)**

DCYF is the principal agency within the executive branch of the Rhode Island State Government established for the general purpose of “mobilize[ing] the human, physical and financial resources available to plan, develop, and evaluate a comprehensive and integrated statewide program of services designed to ensure the opportunity for children to reach their full potential. The services include prevention, early intervention, outreach, placement, care and treatment, and after-care programs...”<sup>xii</sup>

### **3.1.1 Mandatory Reporting Laws**

Under R.I.G.L. 40-11-3, all persons in Rhode Island are required by law to report known or suspected cases of child abuse or neglect to DCYF within 24 hours of becoming aware of such abuse or neglect. The Hotline can be reached at 1-800-742-4453.

Child abuse and neglect means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen (18) by a person, including any employee of a residential facility or any staff person providing out-of-home care, who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

## **3.2 FAMILY COURT**

The Family Court in Rhode Island is a limited jurisdiction court, with exclusive original jurisdiction to hear matters concerning delinquent, wayward, dependent, neglected, or mentally disabled children (persons under 18) in the State. In addition, the Family Court has exclusive original jurisdiction in matters regarding adoption of children, paternity and child support, and child marriages.<sup>xiii</sup>

## **3.3 THE CHILD ADVOCATE'S OFFICE**

The Office of the Child Advocate (OCA) was established by R.I.G.L. 42-73-1 in 1979 to protect the civil, legal, and special rights of all children involved with DCYF. The chief purpose of the OCA is to monitor DCYF and its operations. Its mission is to ensure that DCYF offers the children adequate protection and quality services, while according the children respect for their individual rights and dignity.<sup>xiv</sup>

The OCA must insure that each child in protective care, custody, or treatment are aware of his or her rights under chapter 42-73 and 42-72 of the Rhode Island General Laws. The OCA must periodically review the procedures established by the DCYF with a view towards the rights of the children. The OCA must review complaints of persons and investigate complaints where it appears a child may need assistance from the OCA. The OCA must periodically review facilities, institutions, and residences of children under the care of DCYF, and must recommend changes in procedures for dealing with juvenile problems and in the systems for providing childcare and treatment. The OCA must provide training and technical assistance to Guardians ad litem and special advocates appointed to children in the Family Court, and must review orders of the Family Court relating to children.<sup>xv</sup>

## **3.4 CHILD PROTECTION SYSTEM**

The public policy of the State of Rhode Island is "to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and, for these purposes, to require the mandatory reporting of known or suspected child abuse and neglect, investigation of those reports by a social agency, and provision of services, where needed, to the child and family."<sup>xvi</sup>

## **3.5 THE KEY PLAYERS**

### **3.5.1 Child Protective Investigator (DCYF)**

The role of the Child Protective Investigator is to conduct a safety assessment within the child's environment, and to determine whether the reported allegations are "indicated" or "unfounded."

### **3.5.2 Social Case Worker (DCYF)**

The role of the Social Case Worker is to serve as a catalyst, someone who actively and systematically helps the family to identify or create and use necessary resources.

### **3.5.3 Social Case Worker Supervisor (DCYF)**

The role of the Social Case Worker Supervisor is to assure that all children are protected from harm and that families receive competent and timely services.

### **3.5.4 Court Appointed Special Advocates (CASA)**

CASA assures that the needs and interests of a child in a judicial proceeding are fully protected. CASA conducts independent investigations into the background and facts of a case, determine the child's educational, psychological, and other treatment needs, and help assure that the legal intervention leads to appropriate treatment and action. CASA will represent the hypothetical best interest of the child. CASA represents all children, unless there is a conflict, in which case a Guardian ad litem (GAL) will be appointed to represent the child in the same manner.

### **3.5.5 Child Advocate and Assistant Child Advocate (OCA)**

The role of the OCA is to scrutinize the manner in which the State protects and cares for children by examining pertinent issues system-wide, and to take any necessary action to protect and guarantee the legal, civil and special rights of children in DCYF's care.

### **3.5.6 Educational Advocate**

The Educational Advocate Program is operated out of the Paul V. Sherlock Center on Disabilities at Rhode Island College. The Educational Advocate is a person appointed by the Rhode Island Department of Education to make educational decisions for students with disabilities who are in the care of the DCYF and whose parents cannot advocate on their behalf.

### **3.5.7 Rhode Island Public Defenders (RIPD)**

The RIPD is a firm of lawyers who defend adults and juveniles accused of committing crimes and represent parents who are threatened with loss of custody of their children due to neglect or abuse allegations.

### **3.5.8 Attorney for the Parent(s)**

The Attorney for the Parent assures that the parent's statutory and constitutional rights are fully protected in any judicial proceeding and that the parent understands the judicial process and its potential impact.

#### **3.5.8.1 Rhode Island Legal Services (RILS)**

RILS provides high quality legal assistance and representation to low income individuals.

## **4 STATE INTERVENTION: INVESTIGATIONS AND OUTCOMES**

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### **4.1 CHILD MALTREATMENT DEFINED (DCYF AND STATE OF RI)**

#### **4.1.1 Child Maltreatment**

Parenting behavior that is harmful and destructive to a child's cognitive, social, emotional, or physical well-being and development.

#### **4.1.2 Physical Abuse**

Infliction of physical injury by punching, beating, kicking, biting, burning, or otherwise harming a child

#### **4.1.3 Neglect**

Occurs when the parent(s) or guardian: 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; fails to provide the child proper education as required by law, or; abandons or deserts the child.

#### **4.1.4 Physical Neglect**

Refusal of or delay in seeking health care, abandonment, expulsion from home or not allowing a runaway to return home, and inadequate supervision, provision of food, clothing, or personal hygiene care

#### **4.1.5 Educational Neglect**

Permitted chronic truancy, failure to enroll a child of mandatory school age (6-years-old), other truancy (e.g. requiring a child to care for siblings instead of attending school), and inattention to special educational needs

#### **4.1.6 Emotional Neglect**

Chronic or extreme spouse abuse in the child's presence, permitted drug or alcohol use by the child, and refusal of or failure to provide needed psychological attention or care

#### **4.1.7 Sexual Abuse**

May encompass a range of behaviors including but not limited to: unwanted sexual language, text messages, peeping, exposure, frottage, sexual assault, aggravated sexual assault, attempted or completed rape

#### **4.1.8 Mental Injury (Emotional or Psychological Abuse)**

Includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care toward the child.



## **4.2 FAMILY COURT PETITIONS**

### **4.2.1 Abuse, Neglect, and Dependency Petitions**

RIGL Chapters 40-11 and 14-1 authorize DCYF to place any child under the care, custody, and control of the Department when the child is alleged to be dependent, neglected, or abused.

### **4.2.2 Miscellaneous Petitions**

When a child has been in the voluntary placement of DCYF for thirty days, the primary worker will prepare a summary of facts to support a miscellaneous petition. The court will determine if 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.<sup>xvii</sup>

#### **4.2.2.1 Voluntary Removal**

R.I.G.L. 42-72-14 allows DCYF to accept a parent's request for voluntary placement of a child if the child could benefit from foster care or residential treatment services. A parent may request voluntary placement when a child has an emotional, behavioral, mental, physical or developmental disability. Parents maintain the rights to reasonable visitation, to be consulted on decisions regarding the child's care and placement, to revoke the agreement upon a 10-day written notice to DCYF, and to a case plan.

### **4.2.3 Termination Petitions**

The Family Court shall, upon receipt of a petition filed by a governmental child placement agency after notice to the parent and a hearing on the petition, terminate any and all legal rights of the parent to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the court finds by clear and convincing evidence that the parent willfully neglected to provide proper care and maintenance for the child for at least a year where financially able to do so or the parent is unfit by reason of conduct or conditions seriously detrimental to the child.

#### **4.2.3.1 Cruel or Abusive**

Conduct toward any child that is cruel or abusive in nature will allow the family court to terminate parental rights.

## **5 REUNIFICATION EFFORTS**

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### **5.1 THE TRIAL**

Once a report of child maltreatment leads to the filing of a juvenile petition in the Family Court, the business of protecting children is shared by DCYF, the judiciary and the professionals appointed to represent the various parties. The reunification process begins as soon as the child is removed from the home. The focus of the proceedings is not the abuser, but whether the child is abused or neglected. The trial stage of the proceedings represents a search for truth.

### **5.1.1 The Court Process**

DCYF cases are initiated with either a voluntary placement request or with the Dependent/Neglected/Abused Petition. DCYF may be awarded temporary custody of the child when a family court Judge signs an Ex Parte Order of Detention, and the arraignment will be scheduled within seven days.

The Arraignment will begin with the Court asking the parent or person having custody of or legal responsibility for the child if they admit or deny the allegations in the petition. The primary worker on the case will answer questions about the child's current placement, the availability of suitable caretakers, services offered to parent to prevent removal and assist with reunification, a visitation plan, the last known addresses of parents, the reasons why petitions may not have been filed for siblings, and whether or not the father's name is on the birth certificate.

If temporary custody is assigned to DCYF, a Probable Cause hearing must be scheduled within ten days of a request for a hearing by the parent or parent's attorney. At the Probable Cause Hearing, the main question 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 if there is a continued need for placement even if there was probable cause at the time of removal. If probable cause is found by the Judge, the child will continue in the temporary custody of DCYF pending trial.

At trial, the question before the Court is "Are the allegations contained in the petition supported by clear and convincing evidence?" The petitioning agency has the burden of proving that the child is dependent, neglected, or abused and in need of protection from the Court.

If the State is unable to prove its case, the petition is dismissed unless the DCYF requests and is granted a stay pending appeal to the Rhode Island Supreme Court. Upon dismissal, DCYF ceases to be involved with the family unless the family consents to service.

If the Judge finds the child dependent, neglected, or abused, the child is generally committed to the care, custody, and control of DCYF. The issues of placement and visitation will be resolved, and a service plan will be created and later submitted to the Court.

## **5.2 THE REVIEW**

Once a child has been committed to the care, custody and control of DCYF and a case plan prepared, the Court will conduct periodic reviews of the case. Whenever necessary, parties may also file motions to bring the case to the Court on a date not previously scheduled.

Motions: provide parties with an almost immediate opportunity to bring the case to the Judge to address specific issues - placement changes and other placement-related issues, visitation issues, and treatment issues.

### **5.3 THE CASE PLAN**

Whenever children are committed to the custody of the State, the DCYF family service caseworker develops a case plan that includes information about specific tasks, timeframes and goals.

Consistent and clear case planning aims to avoid "foster care drift" - the prolonged or indefinite placement of children in a variety of out-of-home settings, thereby depriving children of their right to a stable, consistent home. The goal of the case plan is always "reunification".

The purpose of the case plan is to serve as a blueprint for the travel of the case so that the parties are fully aware of their respective rights, duties and obligations.

### **5.4 CASE RESOLUTION AND PERMANENCY GOALS**

Children have a fundamental interest in the continuity and permanence of family relationships. Children dependent on the State for their care have the right to expect that an appropriate plan for achieving permanency will be developed and implemented in a timely fashion. Permanency is achieved when the child's situation provides continuity, consistency, and connection.

#### **5.4.1 Reunification**

When reasonable attempts to resolve issues that caused the family disruption are successful, then permanency through reunification can be achieved.

#### **5.4.2 Adoption**

A child is not "legally free" for adoption until the rights of both parents have been finally terminated.

##### ***5.4.2.1 Voluntary Consent to Termination of Parental Rights (TPR)***

Biological parents may decide to relinquish legal rights to their children. The parent no longer has a right to consent to the adoption of a child or to have contact with a child.

##### ***5.4.2.2 Direct-Consent Adoption***

Provides birth parents with a mechanism to help facilitate permanency for their child when reunification is not possible; provides assurances to the birth parents that their child will continue to be safe and loved as he/she gets older.

##### ***5.4.2.3 Involuntary Termination of Parental Rights (TPR)***

Under certain circumstances, the State is not required to make "reasonable efforts" to either prevent removal of the child from the parent or to reunify families. These circumstances involve severe child maltreatment and/or a particular type of family history of involvement with DCYF.

##### ***5.4.2.4 Open Adoptions***

Formal agreement among the parties, including the adoptive parents, who have been identified and approved at the time of the TPR proceedings when there is an opportunity for some sort of relationship between the adoptive and birth families.

### **5.4.3 Long-Term Foster Care (LTFC)**

Generally used in cases where the child has become integrated into his/her foster home and cannot be adopted for a particular reason.

### **5.4.4 Guardianship**

Takes over the parental role, with special responsibility to assure that the child receives proper care, protection and education (R.I.G.L. 40-11-12, 40-11-12.1 and 40-11-12.3). Federal law allows for "standby guardianship" when parents are chronically or terminally ill. With a "standby guardianship," the parent does not have to relinquish authority but shares it with a designated person.

### **5.4.5 Another Planned Permanent Living Arrangement (APPLA)**

APPLA is a permanent placement for the child that identifies a lifelong connection. APPLA is appropriate only when the court has been provided with documentation that compelling reasons exist which make all other permanency options unacceptable.

### **5.4.6 BHDDH and 42-72-5**

Clause 25 of R.I.G.L. 42-72-5 provides that any person between the ages of 18 and 21, who received services through DCYF prior to attaining eighteen years of age may still receive services from DCYF.

Clause 26 of the same statute provides for a transition plan from DCYF to the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) for any child who is seriously emotionally disturbed or developmentally delayed, and whose care may or shall be administered by BHDDH after the age of 21. At least 12 months prior to the person's twenty-first birthday, the transition planning shall commence, and shall result in a collaborative plan submitted to the family court by both BHDDH and DCYF. The plan will require approval of the court prior to the dismissal of the abuse, neglect, dependency, or miscellaneous petition before the child's twenty-first birthday.

## **5.5 PLACEMENT OPTIONS**

### **5.5.1 Foster Care**

Child placement is offered in licensed foster homes.

### **5.5.2 Kinship Foster Care**

Kinship Foster Care is placement with family members such as grandparents, aunts, uncles, siblings, first and second cousins, and more.

### **5.5.3 Specialized Foster Care**

Specialized foster care is to provide children whose behaviors or needs require special intervention or special education. The child may have a diagnosed physical condition, handicap, or disability and is considered to be a low risk of danger to self or others.

### **5.5.4 Residential Facilities**

Any program which provides on a 24-hour basis, care or treatment for emotionally disturbed children whose needs exceed the normal limits of care. Treatment can include,

but is not limited to: psychiatric services, clinical social work, psychological services, special education, medical and consultive services.

#### **5.5.5 Independent Living Program**

The placement of a child in his or her own residence under the regular supervision of a licensed child care program.

#### **5.5.6 Group Care**

Any program serving thirteen or more children, which provides 24-hour care, including room and board, recreational programs, social services, and may include educational or psychological services.

#### **5.5.7 Group Home I**

A specialized facility for child care or treatment in a dwelling or apartment owned, rented, or leased by a public or private child placing agency, an independent operator, or private or public organization which receives no more than eight children for 24-hour care.

#### **5.5.8 Group Home II**

The same as Group Home I, but with a maximum number of children at twelve.

#### **5.5.9 Out-of-State Placement**

The Rhode Island Family Court hearing is required for any out-of-state facility unless the child will be placed in the home of a relative or if the facility is less than 35 miles from the home of the parent previously having custody of the child.

## **6 CONCLUSION**

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We now view children as members of families and as citizens who enjoy certain basic constitutional rights. One of the goals of the landmark 1980 Federal law, Public Law 96-272, was to provide for more accountability and evaluation at the state level. The 1997 amendment to that law, called the Adoption and Safe Families Act, affirms the need to focus on assessment and evaluation of state child welfare operations in order to identify both the ills and successes within the system.

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- <sup>xi</sup> Child Welfare Information Gateway. (2017). *About CAPTA: A legislative history*. Retrieved 6/7/2018 at <https://www.childwelfare.gov/pubPDFs/about.pdf#page=2&view=Summary%20of%20legislative%20history>
- <sup>xii</sup> See R.I.G.L. 42-72-1 et seq.
- <sup>xiii</sup> See R.I.G.L. 14-1-5.
- <sup>xiv</sup> See R.I.G.L. 42-73-1 et seq.
- <sup>xv</sup> See R.I.G.L. 42-73-7.
- <sup>xvi</sup> See R.I.G.L. 40-11-1.
- <sup>xvii</sup> See R.I.G.L. 42-72-14.