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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO HUMAN SERVICES - ABUSED AND NEGLECTED CHILDREN

Introduced By: Representatives Knight, Ajello, McEntee, Craven, and Donovan

Date Introduced: January 12, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-11-2 of the General Laws in Chapter 40-11 entitled "Abused and
2 Neglected Children" is hereby amended to read as follows:

3 **40-11-2. Definitions.**

4 When used in this chapter and unless the specific context indicates otherwise:

5 (1) "Abused and/or neglected child" means a child whose physical or mental health or
6 welfare is harmed, or threatened with harm, when his or her parent or other person responsible for
7 his or her welfare:

8 (i) Inflicts, or allows to be inflicted, upon the child physical or mental injury, including
9 excessive corporal punishment; or

10 (ii) Creates, or allows to be created, a substantial risk of physical or mental injury to the
11 child, including excessive corporal punishment; or

12 (iii) Commits, or allows to be committed, against the child, an act of sexual abuse; or

13 (iv) Fails to supply the child with adequate food, clothing, shelter, or medical care,
14 though financially able to do so or offered financial or other reasonable means to do so; or

15 (v) Fails to provide the child with a minimum degree of care or proper supervision or
16 guardianship because of his or her unwillingness or inability to do so by situations or conditions
17 such as, but not limited to: social problems, mental incompetency, or the use of a drug, drugs, or
18 alcohol to the extent that the parent or other person responsible for the child's welfare loses his or
19 her ability or is unwilling to properly care for the child; or

- 1 (vi) Abandons or deserts the child; ~~or,~~
- 2 ~~(vii) Sexually exploits the child in that the person allows, permits, or encourages the child~~
- 3 ~~to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled "Commercial~~
- 4 ~~Sexual Activity"; or~~
- 5 ~~(viii) Sexually exploits the child in that the person allows, permits, encourages, or~~
- 6 ~~engages in the obscene or pornographic photographing, filming, or depiction of the child in a~~
- 7 ~~setting that, taken as a whole, suggests to the average person that the child is about to engage in,~~
- 8 ~~or has engaged in, any sexual act, or that depicts any such child under eighteen (18) years of age~~
- 9 ~~performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or~~
- 10 ~~(ix) Commits, or allows to be committed, any sexual offense against the child as such~~
- 11 ~~sexual offenses are defined by the provisions of chapter 37 of title 11, entitled "Sexual Assault",~~
- 12 ~~as amended; or~~
- 13 ~~(x) Commits, or allows to be committed, against any child an act involving sexual~~
- 14 ~~penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen~~
- 15 ~~(15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator~~
- 16 ~~knows, or has reason to know, that the victim is a severely impaired person as defined by the~~
- 17 ~~provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-1(6).~~
- 18 (2) "Child" means a person under the age of eighteen (18).
- 19 (3) "Child protective investigator" means an employee of the department charged with
- 20 responsibility for investigating complaints and/or referrals of child abuse and/or neglect and
- 21 institutional child abuse and/or neglect.
- 22 (4) "Department" means department of children, youth and families.
- 23 (5) "Educational program" means any public or private school, including boarding
- 24 schools, or any home-schooling program.
- 25 (6) "Health-care provider" means any provider of health care services involved in the
- 26 delivery or care of infants and/or care of children.
- 27 (7) "Institution" means any private or public hospital or other facility providing medical
- 28 and/or psychiatric diagnosis, treatment, and care.
- 29 (8) "Institutional child abuse and neglect" means situations of known or suspected child
- 30 abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent
- 31 or the employee of a public or private residential child-care institution or agency; or any staff
- 32 person providing out-of-home care or situations where the suspected abuse or neglect occurs as a
- 33 result of the institution's practices, policies, or conditions.
- 34 (9) "Law-enforcement agency" means the police department in any city or town and/or

1 the state police.

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

8 (11) "Person responsible for child's welfare" means the child's parent; guardian; any
9 individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian
10 and has unsupervised access to a child; foster parent; an employee of a public or private
11 residential home or facility; or any staff person providing out-of-home care (out-of-home care
12 means child day care to include family day care, group day care, and center-based day care).
13 Provided, further, that an individual, eighteen (18) years of age or older, who resides in the home
14 of a parent or guardian and has unsupervised access to the child, shall not have the right to
15 consent to the removal and examination of the child for the purposes of § 40-11-6.

16 (12) "Physician" means any licensed doctor of medicine, licensed osteopathic physician,
17 and any physician, intern, or resident of an institution as defined in subsection (7).

18 (13) "Probable cause" means facts and circumstances based upon as accurate and reliable
19 information as possible that would justify a reasonable person to suspect that a child is abused or
20 neglected. The facts and circumstances may include evidence of an injury, or injuries, and the
21 statements of a person worthy of belief, even if there is no present evidence of injury.

22 (14) "Sexual abuse" means any of the following acts performed by a person:

23 (i) Sexually exploits the child by allowing, permitting, or encouraging the child to engage
24 in prostitution as defined by the provisions in § 11-34.1-2; or

25 (ii) Sexually exploits the child by allowing, permitting, encouraging or engaging in the
26 obscene or pornographic photographing, filming, or depiction of the child in a setting that, taken
27 as a whole, suggests to the average person that the child is about to engage in, or has engaged in,
28 any sexual act, or that depicts any such child under eighteen (18) years of age performing
29 sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

30 (iii) Commits, or allows to be committed, any sexual offense against the child as such
31 sexual offenses are defined by the provisions of chapter 37 of title 11, ("sexual assault"), as
32 amended; or

33 (iv) Commits, or allows to be committed, against any child an act involving sexual
34 penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen

1 (15) years or older and:

2 (A) Force or coercion is used by the perpetrator; or

3 (B) The perpetrator knows, or has reason to know, that the victim is a severely impaired
4 person as defined by the provisions of § 11-5-11, or physically helpless as defined by the
5 provisions of § 11-37-1.

6 ~~(14)~~(15) "Shaken-baby syndrome" means a form of abusive head trauma, characterized
7 by a constellation of symptoms caused by other than accidental traumatic injury resulting from
8 the violent shaking of and/or impact upon an infant or young child's head.

9 SECTION 2. Section 40-11-3.3 of the General Laws in Chapter 40-11 entitled "Abused
10 and Neglected Children" is hereby amended to read as follows:

11 **40-11-3.3. Duty to report -- Sexual abuse of a child in an educational program.**

12 (a) Any person who has reasonable cause to know or suspect that any child ~~has been the~~
13 ~~victim of sexual abuse~~ has been sexually abused as defined in § 40-11-2 by an employee, agent,
14 contractor, or volunteer of an educational program as defined in § 40-11-2 shall, within twenty-
15 four (24) hours, transfer that information to the department of children, youth and families, or its
16 agent, who or which shall immediately forward the report to state police and local law
17 enforcement, and shall initiate an investigation of the allegations of sexual abuse. As a result of
18 those reports and referrals, the department shall refer those children to appropriate services and
19 support systems in order to provide for their health and welfare. In the event the department
20 substantiates the allegations of sexual abuse against an employee, agent, contractor, or volunteer
21 of an educational program, the department shall immediately notify the state police; local law-
22 enforcement agency; the department of education; the educational program; the person who is the
23 subject of the investigation; and the parent, or parents, of the child who is alleged to be the victim
24 of the sexual abuse of the department's findings.

25 (b) This section shall not be construed to require the transfer of information to the
26 department of children, youth and families or its agents for non-sexual physical contact by an
27 employee, agent, contractor, or volunteer of an education program as defined in § 40-11-2 and a
28 child if:

29 (1) The physical contact results in no physical harm to the child;

30 (2) Does not involve contact with any intimate part of the body as defined in § 11-37-1;
31 and

32 (3) Is accidental or unintended, or incidental to a legitimate educational purpose.

33 ~~(b)~~(c) The director is authorized to promulgate rules and regulations in order to carry out
34 the intent of this section.

1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HUMAN SERVICES - ABUSED AND NEGLECTED CHILDREN

- 1 This act would define the term "sexual abuse" and clarify instances when non-sexual
- 2 physical contact need not be reported to the department of children, youth and families.
- 3 This act would take effect upon passage.

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