

2016 -- H 7945

=====
LC005200
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO DOMESTIC RELATIONS - GRANDPARENTS RIGHTS

Introduced By: Representative Gregory J. Costantino

Date Introduced: March 16, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-5-24.1 and 15-5-24.3 of the General Laws in Chapter 15-5
2 entitled "Divorce and Separation" are hereby amended to read as follows:

3 **15-5-24.1. Visitation rights of grandparents.** -- The court may, upon miscellaneous
4 petition of a grandparent ~~whose child is deceased~~, grant reasonable visitation rights of the
5 grandchild or grandchildren to the grandparent, whether or not any divorce or custody
6 proceedings were ever commenced, and may issue all necessary orders to enforce visitation
7 rights.

8 **15-5-24.3. Visitation rights -- Grandparents and siblings.** -- (a) (1) The family court,
9 upon miscellaneous petition of a grandparent for visitation rights with the petitioner's grandchild,
10 and upon notice to both parents of the child and notice to the child, and after a hearing on the
11 petition, may grant reasonable rights of visitation of the grandchild to the petitioner.

12 (2) The court, in order to grant the petitioner reasonable rights of visitation, must find
13 and set forth in writing the following findings of fact:

14 (i) That it is in the best interest of the grandchild as determined on a case-by-case basis
15 that the petitioner is granted visitation rights with the grandchild; In considering whether it is in
16 the child's best interest, the court shall consider all the relevant factors including, but not limited
17 to:

18 (A) The nature of the relationship between the child and the grandparent seeking
19 visitation;

- 1 (B) The amount of time the grandparent and child spent together;
2 (C) The potential detriments and benefits to the child from granting visitation;
3 (D) The granting of visitation will not materially harm the parent-child relationship;
4 (E) The preferences of the child when the court determines it is appropriate; and
5 (F) The motivation of the adults participating in the proceeding.

6 (ii) That the petitioner is a fit and proper person to have visitation rights with the
7 grandchild;

8 (iii) That the petitioner has ~~repeatedly~~ attempted to visit his or her grandchild during the
9 thirty (30) days immediately preceding the date the petition was filed and was not allowed to visit
10 the grandchild during the thirty (30) day period as a direct result of the actions of either, or both,
11 parents of the grandchild;

12 (iv) That there is no other way the petitioner is able to visit his or her grandchild without
13 court intervention; and

14 (v) That the petitioner, ~~by clear and convincing evidence,~~ has successfully rebutted the
15 presumption that the parent's decision to refuse the grandparent visitation with the grandchild was
16 reasonable.

17 (b) (1) The family court, upon miscellaneous petition of, or on behalf of, a sibling(s) for
18 visitation rights with a minor brother(s), and/or step-brother(s), and/or sister(s), and/or step-
19 sister(s) of the sibling(s) and upon notice to both parents of the minor and notice to the minor, and
20 after a hearing on the petition, may grant reasonable rights of visitation of the minor to a
21 sibling(s).

22 (2) The court, in order to grant a sibling reasonable rights of visitation, must find and set
23 forth in writing the following findings of fact:

24 (i) That it is in the best interest of the minor that a sibling(s) be granted visitation rights
25 with the minor;

26 (ii) That the sibling(s) is a fit and proper person to have visitation rights with the minor;

27 (iii) That the sibling(s) was not allowed to visit the minor during the thirty (30) day
28 period immediately preceding the date the petition was filed as a direct result of the actions of
29 either, or both, parents or guardians of the minor;

30 (iv) That there is no other way the sibling(s) is able to visit the minor without court
31 intervention; and

32 (v) That the sibling(s), by clear and convincing evidence, has successfully rebutted the
33 presumption that the parental decision to refuse the visitation with the minor was reasonable.

34 (c) The court may issue all necessary orders relative to the visitation rights it has granted.

1 Once a petition has been granted, notice of any petition seeking a change in custody or visitation
2 shall be served on the petitioner.

3 SECTION 2. Section 15-7-7 of the General Laws in Chapter 15-7 entitled "Adoption of
4 Children" is hereby amended to read as follows:

5 **15-7-7. Termination of parental rights.** -- (a) The court shall, upon a petition duly filed
6 by a governmental child placement agency or licensed child placement agency after notice to the
7 parent and a hearing on the petition, terminate any and all legal rights of the parent to the child,
8 including the right to notice of any subsequent adoption proceedings involving the child, if the
9 court finds as a fact by clear and convincing evidence that:

10 (1) The parent has willfully neglected to provide proper care and maintenance for the
11 child for a period of at least one year where financially able to do so. In determining whether the
12 parent has willfully neglected to provide proper care and maintenance for the child, the court may
13 disregard contributions to support which are of an infrequent and insubstantial nature; or

14 (2) The parent is unfit by reason of conduct or conditions seriously detrimental to the
15 child; such as, but not limited to, the following:

16 (i) Institutionalization of the parent, including imprisonment, for a duration as to render
17 it improbable for the parent to care for the child for an extended period of time;

18 (ii) Conduct toward any child of a cruel or abusive nature;

19 (iii) The child has been placed in the legal custody or care of the department for children,
20 youth, and families and the parent has a chronic substance abuse problem and the parent's
21 prognosis indicates that the child will not be able to return to the custody of the parent within a
22 reasonable period of time, considering the child's age and the need for a permanent home. The
23 fact that a parent has been unable to provide care for a child for a period of twelve (12) months
24 due to substance abuse shall constitute prima facie evidence of a chronic substance abuse
25 problem;

26 (iv) The child has been placed with the department for children, youth, and families and
27 the court has previously involuntarily terminated parental rights to another child of the parent and
28 the parent continues to lack the ability or willingness to respond to services which would
29 rehabilitate the parent and provided further that the court finds it is improbable that an additional
30 period of services would result in reunification within a reasonable period of time considering the
31 child's age and the need for a permanent home;

32 (v) The parent has subjected the child to aggravated circumstances, which circumstances
33 shall be abandonment, torture, chronic abuse and sexual abuse;

34 (vi) The parent has committed murder or voluntary manslaughter on another of his or her

1 children or has committed a felony assault resulting in serious bodily injury on that child or
2 another of his or her children or has aided or abetted, attempted, conspired or solicited to commit
3 such a murder or voluntary manslaughter; or

4 (vii) The parent has exhibited behavior or conduct that is seriously detrimental to the
5 child, for a duration as to render it improbable for the parent to care for the child for an extended
6 period of time;

7 (3) The child has been placed in the legal custody or care of the department for children,
8 youth, and families for at least twelve (12) months, and the parents were offered or received
9 services to correct the situation which led to the child being placed; provided, that there is not a
10 substantial probability that the child will be able to return safely to the parents' care within a
11 reasonable period of time considering the child's age and the need for a permanent home; or

12 (4) The parent has abandoned or deserted the child. A lack of communication or contact
13 with the child for at least a six (6) month period shall constitute prima facie evidence of
14 abandonment or desertion. In the event that parents of an infant have had no contact or
15 communication with the infant for a period of six (6) months the department shall file a petition
16 pursuant to this section and the family court shall conduct expedited hearings on the petition.

17 (b) (1) In the event that the petition is filed pursuant to subdivisions (a)(1), (a)(2)(i),
18 (a)(2)(iii), or (a)(2)(vii) of this section, the court shall find as a fact that, prior to the granting of
19 the petition, such parental conduct or conditions must have occurred or existed notwithstanding
20 the reasonable efforts which shall be made by the agency prior to the filing of the petition to
21 encourage and strengthen the parental relationship so that the child can safely return to the family.
22 In the event that a petition is filed pursuant to subdivisions (a)(2)(ii), (a)(2)(iv), (a)(2)(v),
23 (a)(2)(vi) or (a)(4) of this section, the department has no obligation to engage in reasonable
24 efforts to preserve and reunify a family.

25 (2) Any duty or obligation on the part of a licensed or governmental child placing agency
26 to make reasonable efforts to strengthen the parental relationship shall cease upon the filing of a
27 petition under this section. This provision shall not be construed and is not intended to limit or
28 affect in any way the parents' right to see or visit with the child during the pendency of a petition
29 under this section.

30 (3) Upon the filing of a termination of parental rights petition, the agency has an
31 affirmative duty to identify, recruit, process and approve a qualified family [including qualified](#)
32 [grandparents](#) for adoption or other permanent living arrangement for the child.

33 (c) (1) In considering the termination of rights as pursuant to subsection (a), the court
34 shall give primary consideration to the physical, psychological, mental, and intellectual needs of

1 the child insofar as that consideration is not inconsistent with other provisions of this chapter.

2 (2) The consideration shall include the following: If a child has been placed in foster
3 family care, voluntarily or involuntarily, the court shall determine whether the child has been
4 integrated into the foster family to the extent that the child's familial identity is with the foster
5 family and whether the foster family is able and willing to permanently integrate the child into the
6 foster family; provided, that in considering integrating into a foster family, the court should
7 consider:

8 (i) The length of time child has lived in a stable, satisfactory environment and the
9 desirability of maintaining that environment and continuity for the child; and

10 (ii) The reasonable preference of the child, if the court determines that the child has
11 sufficient capacity to express a reasonable preference.

12 (d) If the court finds that the parental rights of the parent should be terminated as
13 specified in subsection (a), it shall by decree duly entered, appoint some suitable person to give or
14 withhold consent in any subsequent adoption proceedings. In the case of petitions filed by
15 licensed or governmental child placement agencies, the court shall appoint the agency to be the
16 sole party to give or withhold consent to the adoption of the child and further vest the agency with
17 all rights of guardianship over the child.

18 (e) Nothing in this section shall be construed to prohibit the introduction of expert
19 testimony with respect to any illness, medical or psychological condition, trauma, incompetency,
20 addiction to drugs, or alcoholism of any parent who has exhibited behavior or conduct that is
21 seriously detrimental to a child, to assist the court in evaluating the reason for the conduct or its
22 probable duration.

23 (f) The record of the testimony of the parties adduced in any proceeding terminating
24 parental rights to a child shall be entitled to the confidentiality provided for in § 8-10-21 and
25 more specifically shall not be admissible in any civil, criminal, or other proceeding in any court
26 against a person named a defendant or respondent for any purpose, except in subsequent
27 proceedings involving the same child or proceedings involving the same respondent.

28 (g) In the event any child, the parental rights to whom have been finally terminated, has
29 not been placed by the agency in the home of a person or persons with the intention of adopting
30 the child within thirty (30) days from the date of the final termination decree, the family court
31 shall review the status of the child and the agency shall file a report that documents the steps the
32 agency is taking to find an adoptive family or other permanent living arrangement for the child, to
33 place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another
34 planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a

1 minimum, this documentation shall include child specific recruitment efforts, such as the use of
2 state, regional and national adoption exchanges, including electronic exchange system.

3 SECTION 3. Section 42-72-5 of the General Laws in Chapter 42-72 entitled "Department
4 of Children, Youth, and Families" is hereby amended to read as follows:

5 **42-72-5. Powers and scope of activities.** -- (a) The department is the principal agency of
6 the state to mobilize the human, physical, and financial resources available to plan, develop, and
7 evaluate a comprehensive and integrated statewide program of services designed to ensure the
8 opportunity for children to reach their full potential. The services include prevention, early
9 intervention, outreach, placement, care and treatment, and after-care programs; provided,
10 however, that the department notifies the state police and cooperates with local police
11 departments when it receives and/or investigates a complaint of sexual assault on a minor and
12 concludes that probable cause exists to support the allegations(s). The department also serves as
13 an advocate for the needs of children.

14 (b) To accomplish the purposes and duties, as set forth in this chapter, the director is
15 authorized and empowered:

16 (1) To establish those administrative and operational divisions of the department that the
17 director determines is in the best interests of fulfilling the purposes and duties of this chapter;

18 (2) To assign different tasks to staff members that the director determines best suit the
19 purposes of this chapter;

20 (3) To establish plans and facilities for emergency treatment, relocation, and physical
21 custody of abused or neglected children that may include, but are not limited to,
22 homemaker/educator child case aides, specialized foster family programs, day care facilities,
23 crisis teams, emergency parents, group homes for teenage parents, family centers within existing
24 community agencies, and counseling services;

25 (4) To establish, monitor, and evaluate protective services for children including, but not
26 limited to, purchase of services from private agencies and establishment of a policy and
27 procedure manual to standardize protective services;

28 (5) To plan and initiate primary and secondary treatment programs for abused and
29 neglected children;

30 (6) To evaluate the services of the department and to conduct periodic comprehensive
31 needs assessment;

32 (7) To license, approve, monitor, and evaluate all residential and non-residential child
33 care institutions, group homes, foster homes, and programs;

34 (8) To recruit and coordinate community resources, public and private;

- 1 (9) To promulgate rules and regulations concerning the confidentiality, disclosure, and
2 expungement of case records pertaining to matters under the jurisdiction of the department;
- 3 (10) To establish a minimum mandatory level of twenty (20) hours of training per year
4 and provide ongoing staff development for all staff; provided, however, all social workers hired
5 after June 15, 1991, within the department shall have a minimum of a bachelor's degree in social
6 work or a closely related field, and must be appointed from a valid civil service list;
- 7 (11) To establish procedures for reporting suspected child abuse and neglect pursuant to
8 chapter 11 of title 40;
- 9 (12) To promulgate all rules and regulations necessary for the execution of departmental
10 powers pursuant to the Administrative Procedures Act, chapter 35 of title 42;
- 11 (13) To provide and act as a clearinghouse for information, data, and other materials
12 relative to children;
- 13 (14) To initiate and carry out studies and analysis that will aid in solving local, regional,
14 and statewide problems concerning children;
- 15 (15) To represent and act on behalf of the state in connection with federal grant programs
16 applicable to programs for children in the functional areas described in this chapter;
- 17 (16) To seek, accept, and otherwise take advantage of all federal aid available to the
18 department, and to assist other agencies of the state, local agencies, and community groups in
19 taking advantage of all federal grants and subventions available for children;
- 20 (17) To review and coordinate those activities of agencies of the state, and of any
21 political subdivision of the state, that affect the full and fair utilization of community resources
22 for programs for children, and initiate programs that will help ensure utilization;
- 23 (18) To administer the pilot juvenile restitution program, including the overseeing and
24 coordinating of all local community-based restitution programs, and the establishment of
25 procedures for the processing of payments to children performing community service; and
- 26 (19) To adopt rules and regulations that:
- 27 (i) For the twelve-month (12) period beginning on October 1, 1983, and for each
28 subsequent twelve-month (12) period, establish specific goals as to the maximum number of
29 children who will remain in foster care for a period in excess of two (2) years; and
- 30 (ii) Are reasonably necessary to implement the child welfare services and foster care
31 programs [that emphasize the importance of kinship placement](#);
- 32 (20) May establish and conduct seminars for the purpose of educating children regarding
33 sexual abuse;
- 34 (21) To establish fee schedules by regulations for the processing of requests from

1 adoption placement agencies for adoption studies, adoption study updates, and supervision related
2 to interstate and international adoptions. The fee shall equal the actual cost of the service(s)
3 rendered, but in no event shall the fee exceed two thousand dollars (\$2,000);

4 (22) To be responsible for the education of all children who are placed, assigned, or
5 otherwise accommodated for residence by the department in a state-operated or -supported
6 community residence licensed by a Rhode Island state agency. In fulfilling this responsibility, the
7 department is authorized to enroll and pay for the education of students in the public schools or,
8 when necessary and appropriate, to itself provide education in accordance with the regulations of
9 the board of regents for elementary and secondary education either directly or through contract;

10 (23) To develop multidisciplinary service plans, in conjunction with the department of
11 health, at hospitals prior to the discharge of any drug-exposed babies. The plan requires the
12 development of a plan using all health care professionals.

13 (24) To be responsible for the delivery of appropriate mental health services to seriously
14 emotionally disturbed children and children with functional developmental disabilities.
15 Appropriate mental health services may include hospitalization, placement in a residential
16 treatment facility, or treatment in a community-based setting. The department is charged with the
17 responsibility for developing the public policy and programs related to the needs of seriously
18 emotionally disturbed children and children with functional developmental disabilities.

19 In fulfilling its responsibilities the department shall:

20 (i) Plan a diversified and comprehensive network of programs and services to meet the
21 needs of seriously emotionally disturbed children and children with functional developmental
22 disabilities;

23 (ii) Provide the overall management and supervision of the state program for seriously
24 emotionally disturbed children and children with functional developmental disabilities;

25 (iii) Promote the development of programs for preventing and controlling emotional or
26 behavioral disorders in children;

27 (iv) Coordinate the efforts of several state departments and agencies to meet the needs of
28 seriously emotionally disturbed children and children with functional developmental disabilities
29 and to work with private agencies serving those children;

30 (v) Promote the development of new resources for program implementation in providing
31 services to seriously emotionally disturbed children and children with functional developmental
32 disabilities.

33 The department shall adopt rules and regulations that are reasonably necessary to
34 implement a program of mental health services for seriously emotionally disturbed children.

1 Each community, as defined in chapter 7 of title 16, shall contribute to the department, at
2 least in accordance with rules and regulations to be adopted by the department, at least its average
3 per-pupil cost for special education for the year in which placement commences, as its share of
4 the cost of educational services furnished to a seriously emotionally disturbed child pursuant to
5 this section in a residential treatment program which includes the delivery of educational services.

6 "Seriously emotionally disturbed child" means any person under the age of eighteen (18)
7 years or any person under the age of twenty-one (21) years who began to receive services from
8 the department prior to attaining eighteen (18) years of age and has continuously received those
9 services thereafter who has been diagnosed as having an emotional, behavioral, or mental
10 disorder under the current edition of the Diagnostic and Statistical Manual and that disability has
11 been on-going for one year or more or has the potential of being ongoing for one year or more,
12 and the child is in need of multi-agency intervention, and the child is in an out-of-home
13 placement or is at risk of placement because of the disability.

14 A child with a "functional developmental disability" means any person under the age of
15 eighteen (18) years or any person under the age of twenty-one (21) years who began to receive
16 services from the department prior to attaining eighteen (18) years of age and has continuously
17 received those services thereafter.

18 The term "functional developmental disability" includes autism spectrum disorders and
19 means a severe, chronic disability of a person that:

20 (A) Is attributable to a mental or physical impairment or combination of mental physical
21 impairments;

22 (B) Is manifested before the person attains age eighteen (18);

23 (C) Is likely to continue indefinitely;

24 (D) Results in age- appropriate substantial functional limitations in three (3) or more of
25 the following areas of major life activity.

26 (I) Self-care;

27 (II) Receptive and expressive language;

28 (III) Learning;

29 (IV) Mobility;

30 (V) Self direction;

31 (VI) Capacity for independent living; and

32 (VII) Economic self-sufficiency; and

33 (E) Reflects the person's need for a combination and sequence of special,
34 interdisciplinary, or generic care, treatment, or other services that are of life-long or extended

1 duration and are individually planned and coordinated.

2 Funding for these clients shall include funds that are transferred to the department of
3 human services as part of the managed health care program transfer. However, the expenditures
4 relating to these clients shall not be part of the department of human services' caseload estimated
5 for the semi-annual caseload estimating conference. The expenditures shall be accounted for
6 separately.

7 (25) To provide access to services to any person under the age of eighteen (18) years or
8 any person under the age of twenty-one (21) years who began to receive child welfare services
9 from the department prior to attaining eighteen (18) years of age, has continuously received those
10 services thereafter and elects to continue to receive such services after attaining the age of
11 eighteen (18) years. The assembly has included funding in the FY 2008 department of children,
12 youth and families budget in the amount of \$10.5 million from all sources of funds and \$6.0
13 million from general revenues to provide a managed system to care for children serviced between
14 18 to 21 years of age. The department shall manage this caseload to this level of funding.

15 (26) To initiate transition planning in cooperation with the department of behavioral
16 healthcare, developmental disabilities and hospitals and local school departments for any child
17 who receives services through the department of children, youth and families, is seriously
18 emotionally disturbed or developmentally delayed pursuant to § 42-72-5(24)(v), and whose care
19 may or shall be administered by the department of behavioral healthcare, developmental
20 disabilities and hospitals after the age of twenty-one (21) years, the transition planning shall
21 commence at least twelve (12) months prior to the person's twenty-first birthday and shall result
22 in a collaborative plan submitted to the family court by both the department of behavioral
23 healthcare, developmental disabilities and hospitals and the department of children, youth and
24 families and shall require the approval of the court prior to the dismissal of the abuse, neglect,
25 dependency, or miscellaneous petition before the child's twenty-first birthday.

26 (27) To develop and maintain, in collaboration with other state and private agencies, a
27 comprehensive continuum of care in this state for children in the care and custody of the
28 department or at risk of being in state care. This continuum of care should be family centered and
29 community based with the focus of maintaining children safely within their families or, when a
30 child cannot live at home, within as close proximity to home as possible based on the needs of the
31 child and resource availability. The continuum should include community-based prevention,
32 family support, and crisis intervention services, as well as a full array of foster care and
33 residential services, including residential services designed to meet the needs of children who are
34 seriously emotionally disturbed, children who have a functional developmental disability, and

1 youth who have juvenile justice issues. The director shall make reasonable efforts to provide a
2 comprehensive continuum of care for children in the care and custody of the department of
3 children, youth and families, taking into account the availability of public and private resources
4 and financial appropriations and the director shall submit an annual report to the general assembly
5 as to the status of his or her efforts in accordance with the provisions of subsection 42-72-
6 4(b)(13).

7 (28) To administer funds under the John H. Chafee Foster Care Independence and
8 Educational And Training Voucher (ETV) Programs of Title IV-E of the Social Security Act, and
9 the department of children, youth and families higher education opportunity grant program as
10 outlined in chapter 72.8 of title 42, in accordance with rules and regulations as promulgated by
11 the director of the department.

12 (c) In order to assist in the discharge of his or her duties, the director may request from
13 any agency of the state information pertinent to the affairs and problems of children.

14 (d) [Deleted by P.L. 2008, ch. 9, art. 16, § 2.]

15 (e) [Deleted by P.L. 2008, ch. 9, art. 16, § 2.]

16 SECTION 4. This act shall take effect upon passage.

=====
LC005200
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DOMESTIC RELATIONS - GRANDPARENTS RIGHTS

- 1 This act would specify the relevant factors which should be considered by the family
- 2 court when granting grandparents visitation rights.
- 3 This act would take effect upon passage.

=====
LC005200
=====