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1997 Survey of Rhode Island Law: Family Law: An Act Relating to Domestic Relations - Mediation Program for the Termination of Parental Rights, An Act Relating to Human Services - Abused and Neglected Children

Tyler J. Savage

Roger Williams University School of Law

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Family Law. *An Act Relating to Domestic Relations—Mediation Program for the Termination of Parental Rights.* Provides for a mediation program for the termination of parental rights after notice and hearing to the parent and a finding that the parent has acted inconsistent with the proper care of the child. Prior to the filing of a petition for the termination of parental rights, the governmental child placing agency has a duty to make reasonable efforts to strengthen the parental relationship. Effective, June 27, 1997. 1997 R.I. Pub. Laws ch. 59.

This legislation (the Act) gives the family court the authority to terminate parental rights.¹ Upon the filing of a petition and notice to the parent, a hearing is held to establish the legal rights of the parent in relation to the child.² Involuntary termination of parental rights has been granted under certain conditions, e.g., when the parent wilfully neglected to provide proper care for the child for at least one year where the parent was financially able³ when the parent is unfit to care for the child by reason of conduct or conditions seriously detrimental to the child⁴ or when the parent has abandoned or deserted the child.⁵ The parents are permitted to seek treatment to aid in the rehabilitation of their relationship with the child which would allow the parents to avoid the termination of parental rights.⁶ Prior to the termination of parental rights, the child often has been placed in foster-family care, either voluntarily or involuntarily.⁷ If the court finds that parental rights should be terminated, then the court will appoint a suitable

1. R.I. Gen. Laws § 15-7-7(a) (1956). "In considering the termination rights as pursuant to subsection (a), the court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions of this chapter." *Id.* § 15-7-7(c)(1).

2. *See id.* The Act provides that three duly-licensed child-placement agencies shall be allowed to petition for the termination of parental rights, and each petition shall be approved by the director on a case-by-case basis. *Id.* § 15-7-7(h)(1).

3. *See id.* § 15-7-7(a)(1). When determining whether the parent has wilfully neglected to provide the adequate care and maintenance for the child, the court may disregard any support which was infrequent or insubstantial in nature. *Id.*

4. *See id.* § 15-7-7(a)(2). A parent can be considered unfit by reason of emotional illness, mental illness, mental deficiency or institutionalization of the parent, also conduct of a cruel and abusive nature. *See id.* § 15-7-7(a)(2)(i), (ii).

5. *See id.* § 15-7-7(a)(4).

6. *See id.* § 15-7-7(a)(3).

7. *See id.* § 15-7-7(c)(2).

person either to give or withhold consent in any subsequent adoption proceedings.⁸

The Act grants the family court the power to establish a voluntary mediation program for the termination of parental rights.⁹ This voluntary mediation program, once established, enables the court to refer all or any portion of a matter relating to the termination of parental rights.¹⁰ The use of mediation by the family court will not be limited to matters concerning the termination of parental rights, but will also be used when the court is dealing with child-protection matters.¹¹

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8. *See id.* § 15-7-7(d). In cases where the petition has been filed by a child-placement agency, the court shall appoint the agency to be the sole party to give or withhold consent to the adoption of the child. "[T]he state's interest in finding the child an alternative home pursuant to § 15-7-7 arises only when it is clear that the natural parent cannot or will not provide the child with the basic necessities of life." *In re Kyle S.*, 692 A.2d 329, 333 (R.I. 1997).

9. R.I. Gen. Laws § 15-7-7.2 (Supp. 1997).

10. *See id.* If a parent voluntarily terminates the parental rights of a child, then that parent is not subject to the automatic involuntary termination of parental rights of another child unless there is a finding of unfitness. *See In re Kyle*, 692 A.2d 329.

11. *See* R.I. Gen. Laws § 40-11-7.3 (Supp. 1997). Section 40-11-7.3 grants the family court the authority to establish a voluntary mediation program to deal with all or any part of matters involving child protection. *Id.*

Family Law. *An Act Relating to Human Services—Abused and Neglected Children.* Provides the court with the authority to place the custody of the child in the Department of Children, Youth, and Families until the family court determines that the child can be returned to the parents or person previously having custody, consistent with the child's safety. Effective, June 27, 1997. 1997 R.I. Pub. Laws chs. 47, 48.

Under this legislation (the Act), after the court has put custody in the Department of Children, Youth, and Families (DCYF),¹ the court may also appoint a guardian for the child.² The family court may revoke the guardianship of a child pursuant to this section.³ Upon receiving a motion for revocation of the continuation of guardianship, the court will hold a hearing to find whether the continued guardianship is in the best interests of the child.⁴ Prior to the hearing on a motion for revocation, notice must be given by the moving party to all interested parties.⁵

The family court after obtaining jurisdiction by petition pursuant to this section, may restrain the individual⁶ from interfering with the personal liberty of another.⁷ The court may restrain any "notified" person from maliciously causing or attempting to cause bodily harm to another.⁸ Upon the court finding that a person has been harmed or has been threatened with harm, the court may

1. See R.I. Gen. Laws § 40-11-2(4) (1956). Within a period of twelve months after the child is placed in the custody of DCYF, DCYF shall file a motion with the family court requesting a hearing on the status of the child. *Id.* § 40-11-12.1 (Supp. 1997). At the hearing, the court will hear recommendations, oral or written, regarding the best interest of the child. *See id.* Moreover, at every family court review of the disposition of the child, DCYF shall submit a plan that clearly sets forth the goals and obligations of DCYF, the parents, the child and all other interested parties. *See id.* § 40-11-12.2.

2. *See id.* § 40-11-12 (Supp. 1997). The entry of a decree of guardianship under this section terminates the award of custody to DCYF and any involvement that DCYF may have had with the child or the child's parents. *Id.*

3. *Id.* § 40-11-12.

4. *See id.*

5. *See id.* The moving party must give notice to "the department of children, youth and families, the court appointed special advocate, the parent or guardian and any and all other interested persons." *Id.*

6. "The term 'individual' shall include any party to the petition or any person acting on behalf of the party." *Id.* § 40-11-12.4(b).

7. *See id.* § 40-11-12.4. The court must notify the person to be restrained and conduct a hearing before actually issuing the restraining order. *See id.*

8. *Id.*

prescribe treatment or counseling to the individual being restrained.⁹

Under the Act, the family court is given the authority to enforce the violations of the restraining order.¹⁰ Violations of the restraining order are enforced by the family court by an order of contempt; however, the order of contempt is not an exclusive remedy.¹¹ All violations of restraining orders are considered misdemeanors under the Act and are punished by a maximum fine, by imprisonment, or both.¹²

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9. *See id.*

10. *Id.* § 40-11-12.4(d)(1).

11. *See id.* § 40-11-12.4(d)(2). The contempt order shall not exclude a damaged party from available civil or criminal remedies. *See id.*

12. *Id.* § 40-11-12.4(d)(3). The fine shall not exceed one thousand dollars, and the prison term shall not exceed one year. *Id.*