

2015 -- S 0569

LC001501

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO DOMESTIC RELATIONS - ADOPTION OF CHILDREN

Introduced By: Senator Louis P. DiPalma

Date Introduced: March 03, 2015

Referred To: Senate Judiciary

(by request)

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 or
6 adoption proceedings were ever commenced, and may issue all necessary orders to enforce
7 visitation rights. Once a grandparent has been granted reasonable visitation rights, notice of any
8 petition and/or order providing for a change in custody or visitation shall be provided to the
9 grandparent.

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

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

16 (i) That it is in the best interest of the grandchild that the petitioner is granted visitation
17 rights with the grandchild;

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

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

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

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

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

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

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

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

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

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

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

27 (c) The court may issue all necessary orders relative to the visitation rights it has granted.
28 Once a petition has been granted, notice of any petition seeking a change in custody or visitation
29 shall be served on the petitioner.

30 (d) The adoption of a child pursuant to chapter 7 of title 15 shall not limit the ability of a
31 biological grandparent to seek visitation from the adoptive parent or parents pursuant to this
32 section. In the event that the identity of the adoptive parents is unknown, notice of the petition
33 for grandparental visitation shall be served upon the department of children, youth and families,
34 whom shall appear and provide the identity of the adoptive parents or show cause as to why the

1 [identity of the adoptive parents should be withheld.](#)

2 SECTION 2. Section 15-5-24.2 of the General Laws in Chapter 15-5 entitled "Divorce
3 and Separation" is hereby repealed.

4 ~~**15-5-24.2. Visitation rights of grandparents whose child is denied or has failed to**~~
5 ~~**exercise rights. -- In any divorce proceeding the family court may, upon petition of a grandparent**~~
6 ~~**whose grandchild is a child of the marriage, grant reasonable visitation rights of the grandchild to**~~
7 ~~**the grandparent. The court may issue all necessary orders to enforce visitation rights. Once a**~~
8 ~~**grandparent has been granted reasonable visitation rights, notice of any petition and/or order**~~
9 ~~**providing for a change in custody or visitation shall be provided to the grandparent.**~~

10 SECTION 3. Sections 15-7-7, 15-7-8 and 15-7-9 of the General Laws in Chapter 15-7
11 entitled "Adoption of Children" are hereby amended to read as follows:

12 **15-7-7. Termination of parental rights.** -- (a) The court shall, upon a petition duly filed
13 by a governmental child placement agency or licensed child placement agency after notice to the
14 parent and a hearing on the petition, terminate any and all legal rights of the parent to the child,
15 including the right to notice of any subsequent adoption proceedings involving the child, if the
16 court finds as a fact by clear and convincing evidence that:

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

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

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

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

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

33 (iv) The child has been placed with the department for children, youth, and families and
34 the court has previously involuntarily terminated parental rights to another child of the parent and

1 the parent continues to lack the ability or willingness to respond to services which would
2 rehabilitate the parent and provided further that the court finds it is improbable that an additional
3 period of services would result in reunification within a reasonable period of time considering the
4 child's age and the need for a permanent home;

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

7 (vi) The parent has committed murder or voluntary manslaughter on another of his or her
8 children or has committed a felony assault resulting in serious bodily injury on that child or
9 another of his or her children or has aided or abetted, attempted, conspired or solicited to commit
10 such a murder or voluntary manslaughter; or

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

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

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

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

32 (2) Any duty or obligation on the part of a licensed or governmental child placing agency
33 to make reasonable efforts to strengthen the parental relationship shall cease upon the filing of a
34 petition under this section. This provision shall not be construed and is not intended to limit or

1 affect in any way the parents' right to see or visit with the child during the pendency of a petition
2 under this section.

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

6 (c) (1) In considering the termination of rights as pursuant to subsection (a), the court
7 shall give primary consideration to the physical, psychological, mental, and intellectual needs of
8 the child insofar as that consideration is not inconsistent with other provisions of this chapter.

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

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

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

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

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

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

1 (g) In the event any child, the parental rights to whom have been finally terminated, has
2 not been placed by the agency in the home of a person or persons with the intention of adopting
3 the child within thirty (30) days from the date of the final termination decree, the family court
4 shall review the status of the child and the agency shall file a report that documents the steps the
5 agency is taking to find an adoptive family or other permanent living arrangement for the child, to
6 place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another
7 planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a
8 minimum, this documentation shall include child specific recruitment efforts, such as the use of
9 state, regional and national adoption exchanges, including electronic exchange system.

10 ~~15-7-8. Notice to parents -- Notice when no parent living or when parent in mental~~
11 ~~institution. ---~~ **Notice to parents and grandparents - Notice when no parent living or when**
12 **parent in mental institution. --** (a) The notice required in § 15-7-7 shall be as follows: If a
13 parent does not consent in writing to the adoption of his or her child, the court shall order the
14 necessary number of copies ~~a copy~~ of the petition and order that a copy to be served on the parent
15 ~~him or her,~~ personally, if found in the state, and order that copies be sent to both the maternal and
16 paternal grandparents by first class mail, return receipt requested; and if the parent is not located
17 in the state, notice of the petition for adoption shall be published once in any newspaper that the
18 court directs. Like notice shall also be published whenever a child has no parent living.

19 (b) Whenever a parent is confined in any asylum, hospital, or institution for mental
20 illness, whether the asylum, hospital, or institution is situated within or out of the state, the court
21 shall order a copy of the petition and order that copy, subsequently referred to as the notice, to be
22 served on him or her personally, which notice, if to be served within the state, shall be served by
23 an officer authorized by law to serve citations; but if the notice is to be served out of the state, it
24 may be served by any disinterested person, who shall make return, upon oath, that he or she has
25 made service of the notice, the manner in which, the time when, and the place where the service
26 was made; provided, that before any officer or disinterested person makes service of the notice,
27 he or she shall apply to the physician in charge of the asylum, hospital, or institution where the
28 person upon whom the notice to be served is confined, and if the physician shall return, upon
29 oath, on the back of the notice, that in his or her opinion service of the notice upon the person will
30 be injurious to his or her mental health, the officer or person charged with the service shall leave
31 a copy of the notice, with the physician's return, with the keeper of the asylum, hospital, or
32 institution and shall return the notice, with a statement of his or her actions regarding the notice,
33 to the court without further service; and upon return being made in either case, the court, having
34 first appointed a guardian ad litem for the parent, may proceed to act upon the petition and order.

1 ~~15-7-9. Notice to parent whose whereabouts unknown.~~ Notice to parent or
2 grandparent whose whereabouts unknown. -- (a) When a petition concerning the adoption or
3 termination of parental rights is filed which sets forth that the whereabouts of the parent or
4 parents of the child are unknown or the whereabouts of the maternal or paternal grandparents are
5 unknown, that fact shall be sworn to by the petitioners by affidavit which shall set forth the last
6 contacts with the absent parent and any other information considered pertinent in determining the
7 absent parent's whereabouts.

8 (b) The court shall review the affidavit and, if it is determined that personal service
9 cannot be effectuated, an order of notice shall be entered directing that notice be given to the
10 parent by publication in any newspaper of general circulation that the court directs; which notice
11 shall be published once and this notice may be combined and placed with other names that the
12 court is attempting to notify.

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

=====
LC001501
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO DOMESTIC RELATIONS - ADOPTION OF CHILDREN

- 1 This act would require the notification of grandparents upon the filing of a petition to
- 2 terminate parental rights, and for notice to grandparents regarding the custody of the child.
- 3 This act would take effect upon passage.

=====
LC001501
=====