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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO DOMESTIC RELATIONS -- ESTABLISHING THE PROTECTIVE PARENT REFORM ACT

Introduced By: Senator Roger Picard

Date Introduced: February 26, 2009

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 15 of the General Laws entitled "DOMESTIC RELATIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 15.2

PROTECTIVE PARENT REFORM ACT

15-15.2-1. Short title. – This chapter shall be known and may be cited as the "Protective Parent Reform Act."

15-15.2-2. Purpose. – The purpose of this chapter is to protect parents who make a good faith allegation that his or her child has been a victim of child abuse or child neglect or is in danger of becoming a victim of child abuse or child neglect.

15-15.2-3. Good faith/reasonable belief. – If a parent makes a good faith allegation based on a reasonable belief and supported by facts that his or her child is, has been or is in danger of becoming a victim of child abuse or child neglect or suffering from the effects of domestic violence and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with his or her child or restricted in custody, visitation, or contact based solely on that belief or the reasonable actions taken based on that belief.

15-15.2-4. Ex parte contacts. – The prohibition against ex parte contact with judges shall include contacts between judges and guardians ad litem, minor's counsel, custody

evaluators, mental health professionals, mediators, screeners, and all other such people participating in child custody and visitation cases.

15-15.2-5. Guardian ad litem. – (a) The role of the guardian ad litem, minor's counsel and children's attorneys shall be limited to advocating for the wishes of the child and to participating in the court proceedings by presenting evidence and argument in the same manner as the parent's attorneys. Such persons shall be prohibited from substituting their own opinion and judgment for the wishes of the child. Evidence submitted by such persons must comport with applicable evidentiary rules. Such persons shall not be deemed quasi-judicial officers and shall not be granted a fact finding role.

(b) When child abuse or domestic violence is an issue in a child custody or visitation case no mental health professional or child custody evaluator who lacks specialized training and experience in child abuse or domestic violence shall be appointed by the court to conduct an evaluation.

(c) Admissible evidence of child abuse or domestic violence shall be considered in child custody or visitation cases.

15-15.2-6. Timely access to evidence. – Parents shall be provided full and timely access to all custody and mental health evaluations and reports. These shall be an opportunity to depose prior to the trial and cross examine at trial all mental health or custody evaluators.

15-15.2-7. Motivation. – Attempts to discredit a parent's motivation or a child's report of abuse, and/or violence must be supported by credible and admissible evidence of facts which can be established independently of the expert's opinion.

15-15.2-8. Due process. – Custody and visitation for a parent asserting his/her belief that his/her child has been or is in danger of becoming a victim of abuse shall not be changed based only on written declarations or affidavits. Even on an emergency basis, a parent shall be given adequate written notice and an opportunity to be heard, in order to change custody and/or visitation. The asserting parent shall not lose contact with his/her child based solely on the opinion of a mental health professional that such parent is at risk of unlawfully fleeing with the child. There must be credible and admissible evidence independent of the professional's opinion which establishes that parents plan or intent to flee.

15-15.2-9. Transmittal of reports. – Court sponsored mediation, intake screening, family court investigative unit, mental health professionals shall not make recommendations or fact-finding reports to the judge regarding custody or visitation unless all parties freely agree in advance to the transmittal, and a parent shall have the right to contest the report.

15-15.2-10. DCYF. – Parents shall be afforded the opportunity to challenge any

determination or findings of the child protection agency prior to the courts consideration.

15-15.2-11. Preponderance of the evidence. – An allegation of child abuse needs to be supported by a preponderance of the evidence. The court shall consider evidence of abuse in determining the visitation arrangement that is in the best interest of the child. The child shall not be placed in the custody of a parent who presents a substantial risk of harm to that child.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO DOMESTIC RELATIONS -- ESTABLISHING THE PROTECTIVE PARENT REFORM ACT

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This act would protect parents who make a good faith allegation based on a reasonable belief that his/her child has been or is in danger of becoming a victim of child abuse or neglect.

This act would take effect upon passage.

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