

Standards of Proof

Rhode Island Department of Children, Youth and Families

Policy: 500.0080

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The Department of Children, Youth, and Families (DCYF) has the burden of proving the allegations it brings against the parents/caretakers in all administrative hearings relating to child abuse and neglect. If this burden is not initially met, the court must dismiss the case, thus prohibiting any continued DCYF intervention unless Departmental assistance is requested by the family.

"Standard of Proof" is a technical and legal term most often used to describe the quantity of proof and/or type of evidence needed in court proceedings. The standard varies depending on the nature of the proceedings and generally increases with the severity of the legal action to be taken.

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Procedure From Policy 500.0080: Standards of Proof

- A. **Standard of Proof to Indicate a Report of Child Abuse or Neglect** is a “preponderance of the evidence”. This is defined as evidence of a greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.
1. The investigator must continually weigh the reliability of and ascribe importance to each piece of information received during the investigative process. This includes assessing the credibility of the statements of individuals interviewed during the investigation. To assess credibility the investigator must consider the following:
 - a. The opportunity of the witness to see, hear or know what he/she is telling the investigator.
 - b. The logic, accuracy and consistency in the reporting of the witness.
 - c. The behavior and manner of the witness.
 - d. The ability to corroborate the statements of the witness with other evidence (this does not preclude indicating a report based on the statement of one witness if the investigator believes the witness).
 - e. The potential bias or hostility of the witness towards the investigator or the family being investigated.
 2. The method of collection of evidence is crucial because different investigative techniques are used depending on the situation or circumstances. Therefore, the investigator should apply the most appropriate technique in the gathering of evidence. (Technique is presented in Chapter 2, Investigative Handbook.)
 3. The investigator must understand the differences between the various types of evidence obtained during the investigation. (An explanation of the various types of evidence is offered in Chapter 4, Investigative Handbook.)
 4. The documentation of the evidence gathered is an essential part of the investigation. The investigator must accurately document the facts of interviews with witnesses. (See Chapter 5, Investigative Handbook for assistance with documentation.) Documentation should address the following:
 - a. Observations of the manner and style of interaction of the witness, e.g., witness was/was not nervous, witness did/did not answer questions directly.
 - b. Any discrepancies in the statements of witness. Responses of the witness when confronted with these discrepancies.
 - c. Competency level of witness to understand the truth and the ability to accurately express what was observed, especially with young children.
 5. Investigator must document information used to support the finding of the investigation. If allegation is indicated, the investigator must document how the evidence was weighed to reach a finding that the allegations are more likely true than not.
 - a. Investigator should indicate his/her own assessment of the credibility of witnesses.

- b. If relying on a qualified expert to base a decision, the investigator should indicate the level of expertise and weight placed on the qualified expert's testimony.
- B. **Standard of Proof for Filing an Ex Parte Petition for Custody** is evidence that a child suffered, or is likely to suffer, abuse or neglect and that there exists substantial risk that continued care and custody by the parent/person responsible for the child's care may result in further harm to the child.
- C. **Standard of Proof for a Probable Cause Hearing** is defined as reasonable grounds to suspect that a child has been abused or neglected based on reliable facts and circumstances:
 - 1. If a child has been removed from the home by an Ex Parte Detention Order, the respondent's counsel may request this hearing at the arraignment. Within ten days of the request, a hearing is held before a justice of the Family Court. At this hearing, DCYF must show just cause for the removal and for continuing to keep the child out of the home pending a trial on the merits.
 - 2. The rules of evidence tend to be informal at this hearing and often "credible hearsay" is permitted at the discretion of the Court.
 - 3. Several types of evidence may be introduced to meet the standard of proof, including:
 - a. Reports from physicians or police.
 - b. Alleged elements of abuse and/or neglect.
 - c. Prior reports of abuse and/or neglect unless irrelevant because of passage of time or judgment of the Court.
 - d. Account of interviews conducted with the parent(s), child(ren), or others involved in the investigation.
 - e. Investigator's observations.
 - f. Account of agency's attempts, if possible, to maintain the child in the home.
- D. **Standard of Proof for Trial (Dependency/Abuse/Neglect Petition or Termination of Parental Rights Petition)** is "clear and convincing" evidence. This means "fully convincing or more than a majority of the evidence leads to one conclusion". It is evidence that would produce in the mind of the trier of fact, a firm belief or conviction about the allegation sought to be established. In this instance, the judge would consider whether the facts DCYF introduces at a trial lead to a conclusion that the child is either abused and/or neglected as alleged in the petition or in the case of a termination of parental rights that the parent is unfit and rights should be terminated.
 - 1. The rules of evidence are more strictly applied at a trial and hearsay is generally not allowed. (For exceptions, see RICHIST Policy 1100.000, Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition - Trial/Testimony).
 - 2. The investigator and/or primary worker relies on certain documents and/or tangible evidence to prepare for his/her testimony and/or actual courtroom use including:
 - a. Body Charts - outlining the injury.
 - b. Color Photographs - depicting injury to child and/or home environment.
 - c. X-rays - showing current or pattern of previous injury.

- d. Medical Records - maintained by hospitals, treatment physicians, school doctors, public health nurses, etc.
 - e. Miscellaneous Records - mental health evaluations, school records, prior child abuse/neglect reports.
 - f. CPS Investigation documents/forms.
3. The above evidence (2, a-f) must qualify as "business records" prior to their use at a trial:
- a. Made in the regular course of business of the hospital/agency.
 - b. It was the regular course of business to make such record/document.
 - c. Entries/documents made at or near time of transaction/event.
 - d. Above (3, a-c) have been certified by the agency head/designee to be true.
4. An expert may be used at a trial to offer evidence and/or support documents as follows:
- a. A medical diagnosis of a battered child, failure to thrive or fetal alcohol syndrome, or drug withdrawal.
 - b. Report of examining or treating physician that injuries sustained by a minor or a condition of a minor would ordinarily not be sustained or exist except by reason of the acts or omissions of the caretaker.
 - c. Caretaker use of a drug that produced a substantial state of stupor, unconsciousness, intoxication, disorientation or incompetence.
- E. **Standard of Proof for a Review/Motion Hearing** is a preponderance of the evidence (See definition above in Section A).