

Spring 1998

1997 Survey of Rhode Island Law: Legislation: Criminal Law: An Act Relating to Criminal Offenses - Child Abuse

Christopher H. Lordan
Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Lordan, Christopher H. (1998) "1997 Survey of Rhode Island Law: Legislation: Criminal Law: An Act Relating to Criminal Offenses - Child Abuse," *Roger Williams University Law Review*: Vol. 3: Iss. 2, Article 26.
Available at: http://docs.rwu.edu/rwu_LR/vol3/iss2/26

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Criminal Law. *An Act Relating to Criminal Offenses—Child Abuse.* Provides definitions of degrees of child abuse and concomitant penalties. Also provides that where a family court judge issues a no-contact order with an alleged child-abuse victim, that order shall take precedence over all other civil orders that may be issued. Effective, July 3, 1997. 1997 R.I. Pub. Laws ch. 139.

Section 11-9-5.3 of the Rhode Island General Laws provides that any person having care of a child who intentionally inflicts serious bodily injury upon the child shall be guilty of first-degree child abuse.¹ Any other serious physical injury to a child will result in guilt of second-degree child abuse.² In this section, “serious bodily injury” includes injury that creates a substantial risk of death to the child, loss of use of any bodily part or function, broken and fractured bones or serious disfigurement.³ Any person convicted of first-degree child abuse will receive a minimum ten-year sentence and a maximum fine of \$10,000, while a second-degree conviction carries a five-year minimum sentence with a maximum \$5,000 fine.⁴ A first-degree child-abuse conviction under this section also requires that the defendant will be ineligible for parole until at least eight and one half years have been served.⁵ Second-time offenders—any person previously convicted under this section—are required to serve no less than twenty years in prison and face fines up to \$20,000.⁶

This legislation (the Act) provides that section 11-9-5.3 is to be known and referred to as “Brendan’s Law.”⁷ The bill is named for and inspired by Brendan Cuhna, a victim of child abuse. At the age of six weeks, Brendan was beaten by his father so severely that he nearly died. Although he survived the abuse, Brendan is permanently disabled for life.⁸ The legislation was proposed in response to the existing law, which many regarded as ineffectual in

1. R.I. Gen. Laws § 11-9-5.3(1) (1956 & Supp. 1997).

2. *See id.* § 11-9-5.3(2).

3. *Id.*

4. *See id.* § 11-9-5.3(2)(a).

5. *See id.* § 11-9-5.3(2)(b).

6. *See id.* § 11-9-5.3(2)(c).

7. 1997 R.I. Pub. Laws ch. 139.

8. *See Pass Brendan’s Law*, Editorial, *Prov. J. Bull.*, July 30, 1996, available in WL 11082404.

penalizing offenders. Under that law, Brendan's abuser could potentially be released from prison after serving only a few years.⁹

The Act amends section 11-9-5.3 of the Rhode Island General Laws by adding a further provision to the statute governing child abuse.¹⁰ In any case where criminal child abuse has been alleged, a no-contact order issued by a family court judge shall take precedence over any civil orders that may be issued on civil abuse and neglect petitions filed by the Department of Children, Youth and Families.¹¹ Pending the outcome of a criminal case, all civil orders regarding contact will be superseded by the criminal no-contact order.¹² However, the provision does not prevent the alleged abuser from filing a motion to modify the criminal no-contact order.

Christopher H. Lordan

9. See R.I. Gen. Laws § 11-9-5.3 (1956).

10. 1997 Pub. Laws ch. 139.

11. See R.I. Gen. Laws § 11-9-5.3.

12. See *id.*