

# SENATE NO. 60

**AN ACT** RELATIVE TO THE REQUIREMENT THAT THE DEPARTMENT OF SOCIAL SERVICES OF THE COMMONWEALTH OF MASSACHUSETTS OBTAIN UNANIMOUS CONSENT FROM ROOM AND BOARD OR BOARD PAYING OR CONTRIBUTING ADULTS WHO ARE 18 YEARS OF AGE OR OLDER AND WHO ARE NOT APPLICANTS TO THE PLACEMENT OF FOSTER OR ADOPTIVE CARE OF MINOR CHILDREN PLACED INTO THE HOUSEHOLD BY SAID DEPARTMENT OF SOCIAL SERVICES FOR SAID PURPOSES, WHERE THE CASE OF SUCH PLACEMENT IS BEING CARRIED OUT BY THE DEPARTMENT OF SOCIAL SERVICES WHEN A CHILD IS REMOVED FROM THEIR NATURAL HABITAT DUE TO ABUSE, THE ILLEGAL SUBSTANCE ABUSE OF THE BIOLOGICAL PARENTS, THE INABILITY OF THE BIOLOGICAL PARENTS TO CARE FOR AND OR PROVIDE FOR THE CHILD, DUE TO SUCH MIND AND BEHAVIOR ALTERING SUBSTANCE ABUSE AND OR DOMESTIC VIOLENCE AS DEFINED UNDER MGL CHAPTER 209A

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. Be it enacted that notwithstanding and contrary to any law, special law,  
2 regulations or policy so defined by the Department of Social Services that upon the planned  
3 placement of any minor child(ren) for the purposes of foster care or adoptive care by the  
4 Department of Social Services that said Department of Social Services shall be required under  
5 law to obtain unanimous consent from adults who are eighteen years of age (18) and living in  
6 the same household, and who are paying any sums of money to cover the costs of living in the  
7 household, whether it be room and board, food money or any other monies to cover the costs of

8 their contributions of living in said household, where such placement of minor child(ren) for the  
9 purposes of temporary foster care or permanent adoptive care or both is to take place. Such  
10 unanimous consent must be obtained in writing and signed under the pains and penalties of  
11 perjury by the social worker, that such unanimous consent to the placement was obtained by  
12 adult members, at the time of the first home study visit by said social worker from the  
13 Department of Social Services, when the case has been that the child(ren) so being placed had  
14 been removed or voluntarily turned over the care of the Department of Social Services due to  
15 abusive parent(s) and or the guardian(s) of the minor child(ren), if the reasons for such  
16 placement has been due to the legal incarceration of said parents or guardians of said minor  
17 child(ren), because of such incarceration and or action arising out of an offense against said  
18 minor child(ren). The same shall hold true when said child(ren) are removed or voluntarily  
19 turned over to the Department of Social Services from their normal habitat and parent(s) or legal  
20 guardian(s) due to the engaging in illegal substance abuse of one or both parent(s) or  
21 guardian(s) of said minor child(ren), and or that the parent(s) or guardians of said minor  
22 child(ren) has been deemed unfit to care for or to provide for the care of such minor child(ren),  
23 due to his or her addictions to such controlled substances or incapacity to care for such  
24 child(ren) due to such addictions to such controlled substances and or the use of illegal  
25 substances and or abuse to any minor child(ren) they are so accused of or have been convicted  
26 of. Said unanimous consent must be obtained from the paying adults, who are eighteen (18)  
27 years of age or older and living in the same household, where the minor child(ren) are to be  
28 placed by the social worker assigned to the case of placing the children for the purposes of  
29 foster care or adoptive care from said Department of Social Services. Said unanimous consent  
30 must also be from said adults eighteen (18) years of age or older who are not applicants to the

31 said foster care and or adoptive care or both, of said minor child(ren) so placed by the  
32 Department of Social Services. Be it further enacted that in the case of an emergency placement,  
33 the social worker, assigned to the case of placing a minor child(ren) into a household by said  
34 Department of Social Services, where there are paying and contributing adults, eighteen (18)  
35 years of age or older, said unanimous consent from the afore-mentioned adults living in the  
36 household, need not be obtained right at placement, as long as the social worker assigned to the  
37 case by the Department of Social Services makes the appropriate disclosures as to the reasoning  
38 behind the placement and obtains the proper unanimous consent, in the manner so proscribed  
39 under law, within ten(10) calendar days of said emergency placement of a minor child(ren).

40 Be it further enacted that in the case where minor child(ren) are being placed into the household  
41 for the purposes of foster and or adoptive care, due to the illegal substance abuse of the  
42 child(ren)'s natural parent(s) or guardian(s), or any abuse to such child(ren) from said parent(s)  
43 or guardian(s), said adult who is eighteen (18) years of age or older and who is not the applicant  
44 to be a foster or adoptive parent or both, of said minor child(ren) shall have the right to in the  
45 case where it has been disclosed at the time of home study, before giving such consent to said  
46 placement to insist that in the case where said parent(s) or guardian(s) who had had a history of  
47 illegal substance abuse or is currently abusing illegal drugs and or other illegal substances that  
48 affect the mind and or the behavior of the parent(s) or guardian(s) so making visits to the child,  
49 that such parent(s) or guardian(s) who are engaging in such mind altering behavior be  
50 supervised at all times and not be left unattended in the presence of said minor child(ren) or that  
51 of the household whether or not the biological parent(s) who so engage in the use of mind  
52 altering illegal substances had been compelled to give up their parental rights or had done so  
53 voluntarily and whether or not said minor child(ren) had been placed into the household for

54 temporary foster care or permanent adoptive care by the Department of Social Services. Be it  
55 further enacted that such actions as stealing of valuables from another household member or the  
56 placed minor child(ren), for the purposes of supporting such addictions to mind altering  
57 substances, being present and visiting with said minor child(ren) in a high state or a state where  
58 one cannot fulfill the obligations of such visits shall be deemed as detrimental to the best  
59 interests of the child(ren) so being cared for, unless a court orders otherwise, and if they do so,  
60 must make orders pertaining to the visits being on a supervised basis with the Department of  
61 Social Services.

62 Be it enacted that any adult member eighteen (18) years of age or older who have court  
63 appointed guardians due to incompetency, so deemed by a court, shall have say, through an  
64 appointed guardian ad litem, who is not at all involved in the application process of any foster  
65 care or adoptive care of said minor children, through the Department of Social Services, when  
66 the Department of Social Services has disclosed that the nature of said placement is due to a  
67 parent's inability to care for said minor child being place, due to abuse against the child(ren),  
68 illegal drug addiction, substance abuse, or have been arrested, charged and or convicted of any  
69 offense involving said minor child(ren) to be placed. Said consent or condition of consent to  
70 such placement by the adult's guardian ad litem shall be obtained in writing by the social  
71 worker from the Department of Social Services and that said social worker from the Department  
72 of Social Services shall under the pains and penalties of perjury confirm to receiving said  
73 consent to said placement. The guardian ad litem shall also have the authority in the case of an  
74 incompetent adult, insist that the above mentioned parents or guardians of the placed child be  
75 supervised at all times during the visit by the Department of Social Services, before giving such  
76 consent to the placement.

77 Be it enacted that at time of first home visit, during the application process, if a child(ren) is  
78 being placed into a household for foster or adoptive care by the Department of Social Services,  
79 the Social Worker must disclose to all paying household members and or any guardian ad litem  
80 of court declared incompetent adults the nature and the reason why such placement is being  
81 carried out and must disclose and ascertain any known problems about the parent(s) or  
82 guardian(s) to whom the child(ren) has been removed from. Such disclosures shall include but  
83 not be limited to illegal drug use of the child's natural parent(s) or guardian(s), any and all prior  
84 reports of abuse against said minor child(ren) being placed into the household, and any and all  
85 criminal records regarding abuse against such minor child(ren) and any and all prior criminal  
86 records that have to do with illegal drug related offenses, rehabilitation programs attended by  
87 said natural parent(s) or guardian(s), and any offenses that include burglary, larceny, and or any  
88 other offense that involves the stealing of personal property valued at \$250.00 or over for the  
89 purpose of supporting an illegal drug habit or any other kind of illegal behavior that has  
90 adversely affected the person or their domicile, where their family resides. Be it further enacted  
91 that at the time of first initial home study, and before the placement of said minor children, the  
92 Department of Social Services must also disclose to all household members living in the  
93 household where such minor child(ren) are to be placed, any known history of domestic  
94 violence and or any known protective orders taken out against the biological parent(s) or  
95 guardian(s) within the past two years prior to placement as defined and mandated under MGL  
96 Chapter 209A. Such disclosure shall be made first verbally, during initial home study and than  
97 reduced into writing, after the required unanimous consent has been obtained by all contributing  
98 adults eighteen (18) years of age or older. The same shall hold true for adults eighteen (18)  
99 years of age or older who have been deemed incompetent to make such informed decisions as to

100 the feasibility of such planned placement being carried out by the Department of Social  
101 Services.

102 Be it enacted that notwithstanding any law or policy that this shall not be construed to  
103 discriminate against said biological parent(s) or guardian(s) who engage in the use of illegal  
104 drugs or substances or had been investigated, arrested and or convicted of an offense in  
105 connection with the abuse of said minor child(ren). Be it enacted that no household member  
106 shall use this act as a means of retaliation against said biological parent(s) or guardian(s) as  
107 mentioned in the afore mentioned act. Household members who engage in retaliatory acts  
108 against the afore mentioned biological parent(s) or guardian(s) shall be fined no more than one  
109 thousand dollars (\$1,000.00) or imprisonment in a correctional facility for a period not to  
110 exceed one (1) year or both. Be it further enacted that this act shall not preclude any household  
111 member from taking any and all legal actions entitled to them under law for the destructive  
112 behavior of such parent(s) or guardian(s) of said minor child(ren) while visiting with said minor  
113 child(ren), whether the visits be supervised by the Department of Social Services or not. Such  
114 actions shall include but not be limited to any protective orders against a domestic abuser or  
115 domestic violence as stated under MGL. Chapter 209A. This shall include all remedies to a  
116 victim of domestic violence as so outlined in MGL. Chapter 209A. Other remedies shall include  
117 but not be limited to tort liability for wanton misconduct, such as habitual stealing or larceny or  
118 any other reckless offense against the person or domicile or household, where such minor  
119 child(ren) are so living.

120 Be it enacted that the failure of the Social Worker from the Department of Social Services to  
121 obtain the proper unanimous consent from paying and or contributing or incompetent household  
122 members' guardian ad litem, when such person is eighteen (18) years of age or older shall

123 nullify the foster or adoptive care of said minor child(ren) from taking place until such time as  
124 said required unanimous consent has been given by well informed adults of the placement, into  
125 their household that is to occur. Be it further enacted that the failure of the Department of Social  
126 Services to provide the said supervision, as outlined in this statute to the visiting parent(s) who  
127 have either a history of or is engaging in disruptive behavior, shall render the Department of  
128 Social Services liable under strict liability for any damages or acts or omissions or wanton  
129 misconduct that had occurred by said disruptive visiting parent(s) or guardian(s), when such  
130 disruptive acts or omissions occur, while such disruptive parent(s) are visiting said minor  
131 child(ren), without proper supervision.

132 Be it further enacted that said parent(s) who visit their children, after having them removed  
133 from their home due to abuse of the child(ren), illegal drug abuse or addiction or any other mind  
134 altering behavior, or domestic violence as defined under MGL Chapter 209A whether the  
135 removal be compelled or voluntary, shall arrange for appropriate times and to have supervised  
136 visits to the household, where said minor child(ren) are living either temporarily as foster  
137 children or as permanent adoptive children, through the Department of Social Services. Such  
138 supervised visits shall remain in effect until the child(ren) reaches their eighteenth (18<sup>th</sup>)  
139 birthday. Be it further enacted that said parents who are under said supervision by the  
140 Department of Social Services shall pay to the Department of Social Services a fee of no more  
141 than five percent (5%) of their gross income per month. Such fees shall be collected to help  
142 defray the costs of the supervision and also to help defray the costs of any damages or wanton  
143 misconduct that they may cause, in the household so being visited, in the case of their visits  
144 being unsupervised.

145 Be it enacted that this statute shall and all of its sections shall apply to kinship foster care  
146 placements or adoptions that involves the Department of Social Services. Be it further enacted  
147 that any damages or wanton misconduct that the child's mother or father causes while in the  
148 scope of the visits in the case of kinship or interfamilial foster care placements or adoptions that  
149 involve the Department of Social Services, shall be barred of the defense of interfamilial  
150 immunity in any criminal or civil proceeding as it relates to the conduct of the child's parent(s).

151 Be it enacted that if the parent(s) so visiting their child(ren) does any work on the household,  
152 and in the course of doing so, causes any damages or pilfers personal property in excess of  
153 \$100.00 or more shall be held liable under tort liability for his or her actions and in the case of  
154 interfamilial relations, the same shall hold true and the subject shall be barred from raising the  
155 defense of interfamilial immunity in any criminal or civil action arising out of the damages or  
156 pilfering or any other wanton misconduct that he/she has caused upon any member of the  
157 household, including but not limited to the minor child(ren) so placed there by the Department  
158 of Social Services or that of the property itself.

159 Be it enacted that no family member shall discourage or preclude any household member from  
160 pursuing any and all rightful actions that may be entitled to said members of said household,  
161 against said visiting parent(s) whether or not related by blood or adoption or any other  
162 interfamilial ties, for the criminal conduct or other civil remedies arising out of tortuous  
163 conduct, which shall include but not be limited to assault, assault and battery, sexual assault,  
164 rape, statutory rape, murder, stealing, larceny, or any other wanton misconduct. This shall  
165 include but not be limited to actions arising out of domestic violence as outlined in MGL  
166 Chapter 209A. Be it enacted that moral turpitude as defined as the immoral actions of pursuing  
167 legal remedies against a blood or adoptive relative, while he/she is visiting his/her child(ren)

168 and in the course of doing so or doing any kind of work in the household, causes said wanton  
169 misconduct such as pilfering or any other abusive acts, whether due to his or her illegal  
170 addictions or not, for the purposes of this statute, immoral turpitude of taking legal remedies  
171 against a person who is related by blood or adoption or any other interfamilial ties, shall not  
172 suffice as a valid defense or argument in said legal actions arising out of the above mentioned  
173 tortuous or criminal misconduct as defined by law.

174 Be it enacted that the Department of Social Services, upon removal of a minor child(ren) from  
175 the home of their natural parent(s) or legal guardian(s) must also disclose at the time of first  
176 home study to all household members where such placement is to take place by said Department  
177 of Social Services, the nature and extent of any and all known behavioral problems that said  
178 minor child(ren) who are being placed either for temporary foster care or permanent adoption or  
179 both. Be it further enacted that failure to make such disclosure as to the behavioral nature of any  
180 minor child(ren) so being placed shall render the placement null and void until such time as said  
181 required disclosure is made to all household members living in the household where said minor  
182 child(ren) are to be placed for temporary foster care or permanent adoptive care or both.

183 Be it enacted that in the case where the Department of Social Services are the liable party  
184 charged with said responsibilities, as deemed by law, for placing children into foster care, the  
185 Department of Social Services shall assume any and all liability in connection with said placed  
186 foster child(ren) for any and all reckless damages, stealing, pilfering, or the gross negligent acts  
187 of said minor child(ren) so in their custody, for acts including but not limited to reckless damage  
188 to the household and its premises or any personal property belonging to any other household  
189 member so living in the household where such foster care placement has occurred. This shall  
190 hold true until the minor child(ren) have been released from the custody of the Department of

191 Social Services or the minor child(ren) have reached their eighteenth (18'th) birthday. Be it  
192 enacted that in the case of permanent adoption, which is done through the Department of Social  
193 Services, where said Department of Social Services knows of any and all behavioral problems  
194 concerning the minor child(ren) they are so placing for adoption into a household, the  
195 Department of Social Services shall be responsible for providing said permanently placed minor  
196 child(ren) counseling services to said minor child(ren) in connection with said behavioral  
197 problems in an effort to prevent damage or willful misconduct of said placed minor child(ren).  
198 Be it enacted that the failure of the Department of Social Services to provide such counseling  
199 services to permanently placed minor child(ren), where said Department of Social Services are  
200 the main agency responsible for placing the child(ren) up for adoption into the household, shall  
201 render said Department of Social Services liable under strict liability for any torts or willful  
202 misconduct of the said adopted minor child(ren) until said minor child(ren) had reached their  
203 eighteenth (18'th) birthday. Be it enacted that failure to provide the afore mentioned counseling  
204 services to adopted minor child(ren), in connection with disruptive behavioral problems shall  
205 render said Department of Social Services liable under strict liability for acts of the minor  
206 child(ren) so placed, which shall include but not be limited to reckless damage to the household  
207 or its premises, personal injuries or death inflicted on any individuals living in the household,  
208 including but not limited to the adoptive parent(s), willful and reckless damages to any and all  
209 personal property belonging to any member so living in the adoptive household, stealing of said  
210 personal valuables, which shall include but not be limited to computer equipment, or  
211 automobiles, or any other such work related or personal property that values at \$250.00 or  
212 greater, that had been purchased by any member of the household where said adoptive minor  
213 child(ren) is living. Be it enacted that upon the oral request of the adoptive or foster parent(s) to

214 the Department of Social Services, by phone, a caseworker is to be assigned to the case to assess  
215 the situation of the disruptive behavior within forty-eight (48) hours of such oral request and  
216 than upon the finding that there is disruptive behavior occurring in the household, by said  
217 placed minor child(ren), a referral for counseling services shall be made by the social worker  
218 assigned by the Department of Social Service within forty-eight (48) hours of such findings and  
219 must be done so in writing and a copy of such referral for counseling services, to the counseling  
220 agency of the adoptive or foster parent(s) choice, must be given to the adoptive or foster  
221 parent(s) of said minor child(ren). Be it enacted that in the case where the disruptive behavior of  
222 a minor child(ren) so placed into a household by the Department of Social Services for the  
223 purposes of temporary foster care or permanent adoptive care, causes damage or the willful  
224 missing of personal belongings to any other member of the household, where foster or adoptive  
225 child(ren) are so placed by the Department of Social Services, the member of the household so  
226 aggrieved by such disruptive actions arising out of the willful or wanton misconduct of said  
227 placed minor child(ren), shall have a right to compel in a court of law, which has the proper  
228 jurisdiction over cases concerning minor children and their placement, the Department of Social  
229 Services to provide counseling services to said minor child(ren) who are placed by the  
230 Department of Social Services in an effort to prevent such disruptive or abusive behavior of said  
231 minor child(ren) so placed into the household by the Department of Social Services.