

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

110 CMR 4.00: INTAKE

Section

Intake for Voluntary Requests for Services

- 4.01: Voluntary Requests for Department Services
- 4.02: Preliminary Review of Application
- 4.03: Response Time After Preliminary Review of Applications for Department Services
- 4.04: Determination of Eligibility to Receive Social Services
- 4.05: Factors to Consider in Determining Whether an Applicant Should Pay for Department Services
- 4.06: Sliding Fee for Services
- 4.07: Children in Substitute Care, Eligible for Benefits
- 4.08: Voluntary Placement Agreements for Substitute Care
- 4.09: Department Decision-Making for Children in Substitute Care Pursuant to a Voluntary Placement Agreement
- 4.10: Voluntary Surrender of a Child for Adoption
- 4.11: Safe Haven

Intake for Protective Service Delivery

- 4.20: Receipt and Initial Processing of Reports of Alleged Abuse or Neglect
- 4.21: Screening Reports of Alleged Abuse or Neglect
- 4.22: Screening - Process: Information Gathered by the Department
- 4.23: Screening - Reports with a Potential Conflict of Interest
- 4.24: Screening Decision - Emergency Response, Non-Emergency Response, or Screen Out
- 4.25: Documentation and Notification of a Screening Decision
- 4.26: Time Frames for Completing a Response
- 4.27: The Department's Response: Viewing and Visiting the Child
- 4.28: The Department's Response: Gathering Additional Information
- 4.29: Emergency Removal of a Child
- 4.30: Institutional Setting, Additional Screening and Response Procedures
- 4.31: Assignment of Second or Subsequent Reports for Response
- 4.32: The Response Decision – Supported, Substantiated Concern or Unsupported
- 4.33: Notice of Unsupported Response Decision
- 4.34: Notice of Supported or Substantiated Concern Response Decision
- 4.35: Institutional Settings: Coordination Between Agencies
- 4.36: Central Registry Listing
- 4.37: Access to the Central Registry
- 4.38: Registry of Alleged Perpetrators Listing
- 4.39: Access to the Registry of Alleged Perpetrators
- 4.40: Department Decision-Making Authority for Children in Custody Pursuant to a Court Order

Reporting to the District Attorney and Law Enforcement

- 4.50: Working with the District Attorney and Law Enforcement
- 4.51: Mandatory Reporting to the District Attorney
- 4.52: Discretionary Reporting to the District Attorney
- 4.53: Procedures
- 4.54: Multi-Disciplinary Service Team (MDST)

Intake for CRA Application

- 4.60: Scope of 110 CMR 4.60 through 4.67
- 4.61: General Provisions
- 4.62: Court Referral
- 4.63: Court-Ordered Pre-Hearing Temporary Custody
- 4.64: Court Recommended Services, Without Custody to Department
- 4.65: Court-Ordered Post-Hearing Custody to Department
- 4.67: Department Employees at CRA Court Proceedings

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.01: Voluntary Requests for Department Services

(1) Any person located within the Commonwealth may request services from the Department. Section 110 CMR 4.01 through 4.11 apply to requests for Department services.

(2) In order to request Department services, the person making the request must complete a written application form. The Department shall provide assistance to any person who needs assistance completing the written application form.

4.02: Preliminary Review of Application

(1) When the Department receives a written application for services, the Department shall conduct a preliminary review of the application to determine:

- (a) the nature of the service(s) requested,
- (b) whether the Department provides the requested service(s), consistent with the Department's mandate as set forth in M.G.L. c 18B; and
- (c) whether services are needed on an emergency basis.

(2) If the Department determines the requested services are not provided by the Department, the Department shall provide written notice to the applicant in accordance with the requirements set forth in 110 CMR 8.00: *Service Denial, Reduction, or Termination*.

4.03 Response Time After Preliminary Review of Applications for Department Services

(1) Non-Emergency Requests for Department Services: If the Department determines services requested by an applicant are not needed on an emergency basis, the Department shall conduct a family assessment and action plan pursuant to 110 CMR 5.00: *Assessment*.

(2) Emergency Requests for Department Services: If the Department determines an applicant needs Department services on an emergency basis, the Department shall provide or authorize services within seven days from receipt of the application; provided, however, such provision or authorization of services shall be made earlier if necessary to avoid serious and imminent risk to the health or safety of the applicant or a member of the applicant's family.

4.04: Determination of Eligibility to Receive Services

For non-emergency requests for services, or emergency requests for services after the emergency has been abated, the Department shall determine an applicant's eligibility to receive services as part of the family assessment process. The Department shall determine an applicant's eligibility for services by considering whether the applicant needs the requested service(s), if the services will benefit the applicant and whether the applicant can pay in full for the requested services.

4.05: Factors to Consider in Determining Whether an Applicant Should Pay for Department Services

(1) The Department shall consider the following factors in determining whether the applicant must pay all or a portion of the voluntarily requested services:

- (a) the availability of the service(s);
- (b) the client's ability to pay all or a portion of the cost of the service(s), according to a sliding fee scale established by the Department; and
- (c) The applicant's financial resources.

(2) If Department (or provider) service resources are currently unavailable, the eligible applicant may be placed on a waiting list.

(3) If the Department determines an eligible applicant has the ability to pay all of the costs of the services, the Department shall provide the applicant with information and referral services only.

4.06: Sliding Fee for Services

All Department services may be subject to a sliding fee as established by the Department, except for information and referral services.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.07: Children in Substitute Care, Eligible for Benefits

(1) When a child is placed in substitute care pursuant to a Voluntary Placement Agreement or due to court-ordered custody, the Department may apply for benefits on behalf of the child and to be designated as Representative Payee of such benefits.

(a) If the child is already receiving benefits prior to entering Department custody, the Department may apply to be designated as the child's Representative Payee.

(2) As Representative Payee, the Department may retain 90% of the child's benefits as reimbursement for the cost of the child's care. The Department may set aside 10 % of the child's benefits in a Personal Needs Account (PNA) to be used only for the child's personal needs. The PNA shall not exceed an aggregate amount of \$2,000 (100% of the benefits may be used to reimburse the Department whenever the PNA reaches \$2,000). The Department shall periodically review the amount of the uniform "personal needs allowance" for children who receive third party benefits.

(3) A child shall be allowed, subject to approval by the Representative Payee, to spend from the PNA for personal needs, in addition to any uniform "personal needs allowance."

(4) When a child who has a PNA leaves placement, the Department shall reconcile the child's PNA account and sends any conserved funds and checks received after the placement ends to the Social Security Administration.

4.08: Voluntary Placement Agreement for Substitute Care

(1) Execution: The Department may agree to provide substitute care for a child through a Voluntary Placement Agreement, upon the request of one or both parent(s) or parent substitute(s), or upon the request of a young adult or a mature Child, and when supported by an assessment of the needs of the child conducted by the Department.

(a) Minor Child: To finalize the voluntary placement for a minor child, the Department and one or both parent(s) of the minor child shall complete and sign the Department's standard Voluntary Placement Agreement form.

(b) Young Adult: To allow a young adult to continue in the Department's care after reaching 18 years of age or return to care after reaching 18 years of age, the young Adult shall complete and sign a Voluntary Placement Agreement with the Department. The young adult signs the Voluntary Placement Agreement on their own behalf.

(c) All Voluntary Placement Agreements shall be approved by, and signed by, a Department Area Director, or a designee, and one Department social worker.

(2) Form: The Department shall use standard Voluntary Placement Agreement form for a minor child, a mature child, and a young adult to be effective upon the young adult's 18th birthday. The Department's three standard forms shall conform to the following terms.

(a) The Voluntary Placement Agreement for a minor child may be in effect for up to 180 days. If the child will remain in placement beyond 180 days, the Department and parent(s) or parent substitute(s) must file a probate court petition for any further extension.

(b) The Voluntary Placement Agreement is intended to be a flexible document adaptable to the individual needs and circumstances of the client or family; thus, the standard form may be modified as appropriate, so long as any such modifications are in writing and are approved by both parent(s) (or parent substitute(s)) or young adult and the Department.

(c) Voluntary Placement Agreements for young adults shall be in effect until the young adult leaves placement, reaches 23 years of age, or the Agreement is terminated by either the young adult or the Department.

(3) Mature Child: The Department may enter into a Voluntary Placement Agreement with a mature child younger than 18 years old, without signature of any parent(s). Where a mature child signs a Voluntary Placement Agreement on their own behalf, the Department may only honor the Voluntary Placement Agreement for a period of 72 hours.

(a) During the mature child's 72-hour placement period, the Department shall notify the parent(s) of the child, verbally or in writing, that the child has signed a Voluntary Placement Agreement with the Department and is in substitute care.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.08: continued

(b) The parent(s) shall not have the right to revoke or terminate the Voluntary Placement Agreement during the 72-hour period, nor shall the parent(s) have the right to know the whereabouts of the child, unless the child specifically agrees and unless the Department determines that to so inform the parent(s) would not be contrary to the child's best interests.

(c) At the conclusion of the 72-hour period, the Department shall:

1. Return the mature child to their parent(s);
2. Institute court proceedings to obtain custody of the child; or
3. Obtain a Voluntary Placement Agreement signed by the mature child's parent(s).

(4). Termination of Voluntary Placement Agreement, minor child.

(a) A Voluntary Placement Agreement involving a minor child may be terminated by one or both parent(s) who have legal custody of the child by giving written notice to the Department, regardless of which parent signed the Voluntary Placement Agreement, provided the non-signing parent or parent substitute has appropriate legal authority.

(b) Where a parent or parent substitute(s) gives written notice to the Department terminating a Voluntary Placement Agreement the Department shall honor the Agreement for a maximum period of 72 hours thereafter. During the 72-hour period, the Department may institute court proceedings to obtain custody of the child, if the Department determines the child would be at risk of abuse or neglect if returned home.

(c) The Voluntary Placement Agreement automatically terminates if the child placed in substitute care pursuant to the Agreement is returned home to live with their parent(s), or the time period for the substitute care under the Voluntary Placement Agreement expires and has not been extended by a court with jurisdiction over the matter.

1. This section 110 CMR 4.08(4)(c) does not apply if the child is visiting the child's parent(s) and the current Voluntary Placement Agreement is still operative.

(5) Termination of a Voluntary Placement Agreement, young adult.

(a) A young adult in the Department's care pursuant to a Voluntary Placement Agreement may terminate the Voluntary Placement Agreement by giving the Department 3 business days' notice.

(b) The Department may terminate a Voluntary Placement Agreement for a young adult pursuant to M.G.L. c. 119, § 23(f) by providing a termination notice in writing to the young adult at least 30 days prior to the date of termination of the Agreement.

1. The Department's written termination notice must include notice of the young adult's right to contest the termination of the Agreement through the Fair Hearing Process in conformance with 110 CMR 8.00: *Service Denial, Reduction, or Termination*.

2. If the young adult requests a Fair Hearing to review the Department's decision to termination the Voluntary Placement Agreement, the Voluntary Placement Agreement will continue pending the Fair Hearing determination. Following the Fair Hearing, if the Department's decision is upheld, the Voluntary Placement Agreement will not terminate until at least 14 days following the issuance of the Fair Hearing determination.

4.09: Department Decision-Making Authority for Children in Substitute Care Pursuant to a Voluntary Placement Agreement.

In addition to the rights and duties enumerated in the standard form Voluntary Placement Agreement, the Department shall also exercise the following rights and duties as to any child in substitute care pursuant to a Voluntary Placement Agreement.

(1) Interviews of Children: The Department's authority to allow a child in Department care pursuant to a Voluntary Placement Agreement to be interviewed is limited as follows in 110 CMR 4.09(1)(a) and (b). Interviews of a child conducted by social workers employed by the Department are exempt from this provision.

(a) Police Officer or a Representative of the District Attorney's Office:

1. The Department may not consent to having a child interviewed by a police officer or representative of the District Attorney's Office. The parent(s) retain the right to determine if their minor child will be available for an interview by a police officer or a representative of the District Attorney's Office. A mature child may consent to such interviews on their own behalf.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.09: continued

2. The Department, Department foster or pre-adoptive parent(s) or other Department Providers caring for the child in the Department's care, may not consent to having the child interviewed by a police officer or representative of the District Attorney's Office if the child is a possible or known defendant in a criminal action. A child considered by the Department to be a mature child, may not consent to such interviews on their own behalf. The Department may go to court and request the appointment of a *Guardian Ad Litem* with authority to determine whether the child should or will consent to participate in any kind of law enforcement interview or interrogation.

(b) All Other Interview Requests: The Department, upon receipt of any other interview request, shall make all reasonable efforts to consult with the parent(s).

1. If contact with parent(s) is made, the Department shall honor the parent's(s') wishes.
2. If the Department is unable to contact the parent(s), the Department may not consent an interview of the child, unless there are special circumstances under which the interview would further the best interests of the child, in which case the Department may consent.

(2) School Permissions: If the child is enrolled in a public school, private school, group care facility, childcare facility, residential placement, or other such facility, the facility may request or require the execution of a consent form for a variety of activities, including sport participation, field trips and driving forms. The Department, including foster parent(s), may exercise judgment to determine whether it is in the child's best interests to sign the form, and may consent or deny permission on that basis.

(3) Permits, Licenses: The child may wish to obtain various permits or licenses, including hunting and fishing permits, or driver's and motorcycle licenses. If a permit or license requires parental consent, the Department shall make all reasonable efforts to consult with the parent(s).

(a) If contact with parent(s) is made, the Department shall honor the parent's(s') wishes; or

(b) If the Department is unable to contact the parent(s), the Department shall exercise its clinical judgment to determine whether it is in the child's best interests to obtain such permit or license, and will consent or deny on that basis.

(4) Permission to Marry: The Department, including foster parent(s), may not consent to the marriage of any minor child in its care pursuant to a Voluntary Placement Agreement.

(5) Enlistments to Military: Upon receipt of a request from a child to enlist into military services, the Department shall make all reasonable efforts to contact the parent(s).

(a) If contact with the parent(s) is made, the Department will honor the parent's(s') wishes; or

(b) If the Department is unable to contact the parent(s), the Department shall exercise its clinical judgment to determine whether it is in the child's best interests to enlist in the military, and will consent or deny on that basis.

(6) For all Issues Related to Medical Authorizations: All requests for consent related to medical authorizations will be addressed pursuant to 110 CMR 11.00: *Medical Authorizations*.

(7) Religion: The Department, including foster parent(s), may not procure or authorize any religious ceremony for any minor child in its care pursuant to a Voluntary Placement Agreement.

4.10 : Voluntary Surrender of a Child for Adoption

(1) Upon receipt of a request from a birth parent to accept the voluntary surrender of a child for adoption, the Department shall undertake the following actions prior to acceptance of the child for adoption:

- (a) Explore alternatives to surrendering the child for adoption with the parent(s), including providing casework services to support the needs of the parent(s) and the child(ren).
- (b) If casework services are accepted, the Department shall develop an Action Plan and provide the services set forth in the action plan.
- (c) If casework services are declined, the social worker shall record the offer and declination of services in the electronic case record.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.10: continued

(d) Where one of the birth parents is not present, the social worker shall obtain information to assist in locating the absent parent, to explore possible placements for the child.

(e) The Department social worker shall collect and record in the electronic case record psycho-social and medical information about the child and the child's biological family.

(2) The Department's acceptance of a voluntary surrender of a child for adoption by a birth parent shall be in conformity with M.G.L. c. 210, § 2 and the form specified therein (the "Voluntary Surrender Consent Form"). In addition, the Department must comply with the following requirements:

(a) The Department shall encourage a parent(s) seeking to surrender a child for adoption to bring two witnesses of the parent's(s') choice to witness the execution of the Voluntary Surrender Consent Form. In the event a parent(s) declines to bring two witnesses, one or more Department employees shall act as witness on the parent's(s') behalf.

(b) When a mature child is the parent seeking to voluntarily surrender a child for adoption, the Department shall first explore with the mature child's parent alternative family resources, including adoption by an extended family member.

(c) When a parent(s) of Native American heritage seeks to voluntarily surrender a child, the Department shall inform the parent(s) of their rights pursuant to the Indian Child Welfare Act (ICWA). Pursuant to the ICWA, a Voluntary Surrender Consent Form for a child protected by the ICWA must be executed before a Judge and comply with all ICWA requirements.

4.11 : Safe Haven

(1) A parent(s) is permitted to voluntarily place their newborn child under seven days old with a hospital, police department or manned fire department, hereinafter "Safe Haven Facility," pursuant to M.G.L. c. 119, § 13 ½.

(2) When a parent leaves a child at a Safe Haven Facility, the Safe Haven Facility is required to immediately notify the Department, which shall immediately arrange for placement of the child under M.G.L. c. 119, § 23(a)(5).

(3) If the parent's(s') identity is known, the Department may explore with the parent entering into a Voluntary Placement Agreement or executing a Voluntary Surrender Consent Form.

(4) If the parent(s) did not identify themselves to the Safe Haven Facility, or is unwilling to sign a Voluntary Placement Agreement or a Voluntary Surrender Consent Form, the Department shall file a court proceeding for custody of the child no later than five business days following receipt of notice from the Safe Haven Facility.

4.20 : Receipt and Initial Processing of Reports of Alleged Abuse or Neglect

The Department maintains a 24-hour intake process for receiving reports of known or suspected incidents of abuse or neglect of children. A report to the Department of abuse or neglect is referred to as a "report" or a "51A report."

(1) Business Days, Business Hours. To report known or suspected abuse or neglect of children on a business day, during business hours, a mandated reporter or any other persons seeking to report an incident of child abuse or neglect, shall contact the Department's Area Office which covers the residence of the child in question. When the residence of the child is unknown or outside the Commonwealth, the reporter should make the report to the Department Area Office closest to the reporter, but the Department shall accept a report submitted to any Area Office of the Department. Each area office of the Department shall have one or more employees designated to receive 51A reports.

(2) Evenings, Weekends, and Holidays.

(a) A mandated reporter seeking to report known or suspected abuse or neglect of a child during non-business hours shall file a report with the Department pursuant to M.G.L. c. 119, §51A. When an oral report is made by contacting the statewide Child-At-Risk-Hotline (1-800-782-5200), the mandated reporter shall follow their report to the Child-At-Risk-Hotline within 48 hours with a written report to the Department detailing the suspected abuse or neglect.

(b) Any other person seeking to report known or suspected abuse or neglect of a child during non-business hours shall contact the statewide Child-At-Risk-Hotline (1-800-782-5200).

(3) Incomplete Reports. The Department may treat incomplete reports as requests for information and referral services.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.20: continued

(4) Documentation of Reports of Abuse or Neglect. The Department shall enter the reported information of abuse or neglect into the electronic case record maintained by the Department. The Department shall establish a standard “51A standard report form,” which is populated with the reported information and is printable.

(5) Identity of Reporter and Anonymous Reports. The Department or Hotline employee shall record the identity of the person making the report in the electronic case record.

(a) Mandated reporters who report an incident of child abuse or neglect to the Department must provide their name and address when making the report.

(b) The Department shall accept anonymous reports from non-mandated reporters if the reporter refuses to identify themselves. However, if the reporter provides any identifying information to the Department, the Department shall record the information for later use by the Department.

(c) The Department or Hotline employee shall inform mandated reporters that they are required by law to submit a report to the Department, pursuant to M.G.L. c. 119, § 51A.

4.21 : Screening of Reports of Alleged Abuse or Neglect

(1) Upon receipt of a 51A report, the Department shall, pursuant to M.G.L. c. 119, § 51B, immediately gather information related to the report, referred to as “screening a report.” The purpose of screening a report is to:

(a) Identify children at risk of abuse or neglect from a caregiver or at risk of sexual exploitation or human trafficking;

(b) Gather information necessary to make a screening decision as to whether the Department should initiate a response pursuant to M.G.L. c. 119, § 51B;

(c) Determine if an emergency 51B response is required;

(d) Complete any mandatory referrals to the District Attorney, or local law enforcement; and,

(e) Refer the reporter to other authorities, including the police, District Attorney, licensing agency, as applicable.

(2) Reports involving Department employees, household or family members of Department employees, foster parents, pre-adoptive parents, or Area Board members shall be screened in accordance with 110 CMR 4.23: *Screening Reports with a Potential Conflict of Interest.*

(3) Timeframe. The screening decision is made within the first of 15 business days permitted for the response under M.G.L. c. 119, § 51B, unless an additional day is needed to obtain specific piece of information from a collateral contact to make the screening decision.

4.22 : Screening Process: Information Gathered by the Department

(1) During the screening process, the Department shall gather information related to the 51A report from a variety of sources as follows:

(a) Gather relevant information from the reporter;

(b) Review Department files and Central Registry for any Department involvement with any family member, caregiver, and any other person who lives in the household where the child(ren) resides, or who is otherwise connected to the allegations in the report;

(c) Consult with the Department social worker assigned to the family, if the family is currently involved with the Department;

(d) Obtain Criminal Offender Registry Information (CORI), Sex Offender Registry Information (SORI), and the national crime history database check for the child(ren)’s parent(s), persons 15 years of age and older who reside in the household of the child(ren) or are otherwise connected to the allegation(s), and anyone alleged to be responsible for the abuse or neglect;

(e) Request records from other state child welfare agencies, if the Department learns of prior or current family involvement with other state child welfare agencies;

(f) Request information from local law enforcement to review law enforcement activity at the home or concerning a family member, caregiver, and any other person who lives in the household where the child(ren) resides, or who is otherwise connected to the allegations in the report;

(g) Contact other persons who may have information about the allegations;

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.22: continued

(h) Utilize search tools as needed to gather information to identify caregivers and inform the screening decision; and

(i) Complete other activities as required by the Department's Protective Intake Policy.

(2) Identification of Family Members: During the screening process the Department shall identify and document the identities of all reported family or household members. For the purpose of screening and response, family or households members includes all family members and other individuals residing in the home, children in Department placements, children residing out of the home, and any parent or parent substitute living out of the home.

4.23 : Screening Reports with a Potential Conflict of Interest

(1) If a 51A report concerns a Department employee, a member of a Department employee's household; a Department employee's non-household immediate family member, or an Area Board Member or other citizen advisory group member, the Department shall immediately refer the report to the Central Office Special Investigations Unit (SIU) for screening and response.

(2) If a 51A report concerns a staff member of the SIU or the Case Investigation Unit (CIU), the Commissioner or designee shall determine which Area Office or contracted agency will conduct the Screening and response.

(3) If a 51A report concerns foster parent(s) or pre-adoptive parent(s), the Area Office covering the geographic area of the home shall begin the screening process by ensuring the immediate safety of the child(ren). After recording the initial information from the reporter, the Area Office shall transfer the 51A report to the SIU to complete the screening and response as necessary, unless the director of the SIU determines it would be more expedient for the Area Office to complete the response.

4.24 A: Screening Decision – Emergency Response, Non-Emergency Response or Screen Out report

The Department shall immediately screen a 51A report to determine if the report reflects an emergency situation requiring an emergency 51B response.

(1) Emergency 51B Response: An emergency response is required when the Department determines the failure to take immediate action would pose a substantial risk of death, serious emotional or physical injury, or sexual abuse of a child(ren).

(2) Non-Emergency Response: A non-emergency response occurs when the Department determines a child(ren) may have been abused and/or neglected or may be at risk of being abused and/or neglected by a caregiver OR a child(ren) has been or may be at risk of sexual exploitation and/or human trafficking, AND the situation as reported does NOT pose a substantial risk of death, serious emotional or physical injury, or sexual abuse to a child(ren).

(3) Screen Out Report: Where the Department determines the report does not meet the Department's criteria of suspected abuse or neglect and a response is not required, the Department may close the report, referred to as "screening out" the report. A report may be screened out if it meets any of the following criteria:

(a) The report does not involve a child(ren);

(b) The report involves a child(ren), but the allegations are not within the Department's mandate concerning abuse or neglect of children;

(c) The alleged perpetrator is not a caregiver, unless the report involves allegation of sexual exploitation or human trafficking. The Department may not screen out a report on the sole basis that no alleged perpetrator is identified or that the alleged perpetrator is unknown.

(d) The incident or condition reported by the reporter is so outdated that there are no children who might be currently at risk for abuse or neglect; or

(e) The report is demonstrably unreliable.

(4) Invalid Allegation: Based on the information obtained during the screening process, the Department may determine that the report is frivolous or may make an absolute determination that abuse or neglect of a child(ren) has not taken place. In such instances, the Department documents the reason for the invalid allegation determination in the electronic case report.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.25 : Documentation and Notification of a Screening Decision

- (1) Documentation of Screening Activities: The Department shall document all activities conducted during the screening process on a form established by the Department, maintained in electronic or paper copy.
- (2) Entry in the Central Registry: The Department shall enter information from each 51A report into the Department's Central Registry, including reports the Department screens out.
 - (a) If the Department determines during the screening process that the 51A report is an invalid allegation, the Department shall indicate such in the intake form in the Central Registry.
- (3) Notification to mandated reporters of a Screen Out Decision: The Department shall send a written notice to a mandated reporter if the Department decides to take no further action on a report (screens out) filed by the mandated reporter by mail or through electronic means if available.
- (4) Notification to the District Attorney and Local Law Enforcement: At any point in the screening process, if the Department determines the report requires a mandatory referral to the District Attorney and local law enforcement, the Department shall immediately make such notification in accordance with 110 CMR 4.50 through 110 CMR 4.54.

4.26 : Time Frame for Commencing and Completing the 51B Response

- (1) The Department shall commence an emergency response within two hours of receipt of the report by the Department and shall complete the emergency response within five business days of receipt.
- (2) The Department shall commence the response for a non-emergency report within two business days of receipt of the report by the Department. The Department shall complete the non-emergency response within 15 business days of receipt of the report, unless extended in accordance with Department's Protective Intake Policy.
- (3) The result of all 51B responses shall be in writing, entered onto a standard "51B response" form as established by the Department, which may be electronic.

4.27 : The Department's 51B Response: Viewing the Subject Child

- (1) The Department commences a 51B response to all screened in reports (emergency and non-emergency) pursuant to M.G.L. c. 119, § 51B. Through the 51B response, the Department gathers information to determine:
 - (a) the existence, nature, extent and cause or causes of the alleged abuse or neglect and other conditions affecting the safety and well-being of the child(ren);
 - (b) the identity of the person or persons alleged to be responsible therefor, if possible, and whether to list the person as an "alleged perpetrator" in the Department's Central Registry;
 - (c) the name, ages and condition of all other children in the same household; and
 - (d) the Department's intervention, if any, to safeguard the child(ren)'s safety and well-being.
- (2) For all screened in reports, the Department shall view the child(ren) who is the subject of the report in the child(ren)'s home, except in situations identified in 110 CMR 4.27(2)(c).
 - (a) During the emergency response, the Department shall visit the child(ren) who is the subject of the report a minimum of once within two to four hours of receipt of the report and shall visit all other children in the home within 24 hours of receipt of the report.
 - (b) Where a report is designated for a non-emergency response, the Department shall visit all children and the home within three business days of receipt of the report.
 - (c) For all Department 51B responses, the Department's child visit should occur in the home. However, in the certain situations the Department employee assigned to conduct the response (the "response worker") and the supervisor may decide another location is more appropriate, particularly where the child is hospitalized, the injury or incident occurred outside the home, or the child would be placed at greater risk if interviewed in the home. The response worker and supervisor may waive the visit to the child(ren)'s home in appropriate circumstances, including where the abuse alleged occurred outside the child(ren)'s home, such as a childcare facility and the child(ren) is viewed at the childcare facility.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.27: continued

- (d) The Department procedures where an individual or family refuses to permit the Department to view a child(ren) are set forth in 110 CMR 4.27(5).
- (3) The Department shall, consider the reported child(ren)'s and family's linguistic capacity and cultural needs to perform a fair and comprehensive response.
- (4) The response worker shall view the child(ren) who is the subject of a report in a manner that takes into account and respects the child(ren)'s age, sex, and other circumstances, particularly with respect to removal of the child's clothing which may be necessary to view injuries.
- (5) At the time of the first contact with parent(s) or caregiver(s), the response worker shall deliver to the individual(s) a written statement of rights, in a standardized form established by the Department. The statement of rights shall include:
 - (a) Notice that the Department received a 51A report alleging abuse or neglect of the child(ren);
 - (b) The subject matter and possible effects of the report and the Department's 51B response; and
 - (c) Notice that any information provided to the Department may be used in subsequent court hearings.
- (6) Where an individual or family prevents the response worker from viewing the child(ren) who is the subject of a report or from determining the name, age, or condition of other children in the same household the response worker shall proceed as follows:
 - (a) If the response worker has reason to believe the child(ren) is in immediate danger of serious physical harm resulting from abuse or neglect, the response worker shall seek the aid of the local police in entering the home or otherwise viewing the child.
 - (b) If the response worker does not have reason to believe the child(ren) is in immediate danger of serious physical harm resulting from abuse or neglect, the response worker shall immediately inform their supervisor of the lack of access.
 - (c) Where the Department is denied access to view the subject child(ren) in the home, the Department may choose to waive a home visit if the Department is able to view the child(ren) in another location.
 - (d) If the response worker is ultimately unable to view the child(ren), the supervisor shall make the response Decision based on the supervisor's evaluation of the report and any collateral information.

4.28 : The Department's Response: Collecting Additional Information

- (1) In an emergency response, within 24 hours after receipt of the 51A report, the Department shall make an initial determination as to the child(ren)'s safety and whether to seek custody of the child(ren).
- (2) In a non-emergency 51B response, the Department shall proceed with the 51B response, collect additional information, and as applicable shall:
 - (a) Make any collateral contacts necessary to obtain reliable information related to the reported incident and the child(ren)'s condition. response workers may only disclose limited information about the child(ren) and the family as is reasonably necessary to obtain information regarding the allegations made in the 51A report. While collateral contacts are included as sources of information, the parent(s) or caregiver(s) of the subject child(ren), the subject child(ren) themselves, and the reporter, shall be considered the primary sources of information;
 - (b) Visit all children and the home within three business days of receipt of the report;
 - (c) Visit and interview the parent(s) and other individuals living in the home a minimum of one time, the initial visit to occur in the home within three business days after receipt of the 51A report;
 - (d) Contact any parent or parent substitute living out of the home, who can be located, a minimum of one time. The nature of the contact is determined by the response worker and supervisor;
 - (e) Complete any screening processes not completed during the screening process;
 - (f) Interview the person alleged to be responsible for the incident(s) of abuse or neglect;
 - (g) Consult with the District Attorney or law enforcement where the District Attorney or law enforcement is investigating the same allegations in the report; and
 - (h) Complete any other activities required by the Department's Protective Intake Policy.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.29 : Emergency Removal of Child(ren)

- (1) Emergency removal pursuant to M.G.L. c. 119, § 51B is an extreme measure requiring dire circumstances. Before arriving at a decision to effect an emergency removal, the response worker shall consider the potential harm to the child(ren) caused by such removal.
- (2) A child may be immediately taken into custody if, after viewing the child, the Department's response worker finds reasonable cause to believe:
 - (a) A condition of serious abuse or neglect (including abandonment) exists;
 - (b) As a result of that condition, removal of the child is necessary to avoid a substantial risk of death or serious emotional or physical injury or sexual abuse to the child(ren);
 - (c) The nature of the emergency is such that there is inadequate time to seek a court order for removal; and
 - (d) Reasonable efforts to prevent the removal have been considered and are not sufficient to mitigate the risk of harm to the child(ren).
- (3) The next business day following an emergency removal, the Department shall file a written report with the court together with a petition pursuant to M.G.L. c. 119, § 24.

4.30 : Institutional Settings, Additional Screening and Response Procedures

- (1) All reports of abuse or neglect of children in an institutional setting, which includes a foster home, shall be made to the Department pursuant to the provisions of M.G.L. c. 119, §§ 51A through 51F.
- (2) The Department shall address all reports of abuse or neglect of children in the institutional setting according to the same procedures as all other 51A reports, except that the Department's response worker shall also visit the institution in question in connection with the response.
- (3) The Department shall notify the Department of Early Education and Care (EEC), Department of Elementary and Secondary Education (DESE), Department of Mental Health (DMH), Department of Developmental Services (DDS), Department of Public Health (DPH), or Department of Youth Services (DYS) when the Department receives and after the Department screens a report alleging that abuse or neglect of a child occurred at a facility owned, operated or funded, in whole or in part, by the relevant agencies, or at a facility operated by a person or entity subject to licensure or approval by any of said agencies to coordinate any investigations related to the report.
- (4) The Department shall notify the director of a facility when the Department initiates a response due to a report involving the facility.
- (5) During the Department's response, the Department's response worker may be accompanied by an employee of EEC, DESE, DMH, DDS, DPH, or DYS, if said agency is responsible for the institution in question, and if the Department and said agency have previously entered into an interagency agreement which details procedures for such joint activities, including but not limited to procedures to minimize the number of interviews of and trauma to any child victim.

4.31 : Assignment of Second or Subsequent Reports for Response

When the Department receives a second or subsequent report that involves the same child(ren) or caregiver involved in an open 51B response, the Department will in most cases, assign the same response worker to respond to the new report. The Department may assign a different response worker to the subsequent report due to the timing or nature of the subsequent report.

4.32 The Response Decision – Supported, Substantiated Concern, or Unsupported

- (1) Based on the facts gathered during the response, the assessment of parental capacities, the results of the risk assessment tool, and clinical judgement, the response worker, in consultation with the supervisor determines the following:
 - (a) A finding on the reported allegations(s) or discovered conditions, including a finding on any person(s) responsible, and

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.32: continued

(b) A determination as to whether Department intervention is necessary to protect the safety and well-being of the child(ren) and mitigate identified risks. Circumstances to consider when determining whether intervention is necessary include:

1. The role of the alleged perpetrator;
2. The current and potential threat posed by the alleged perpetrator; and
3. The parent(s) or caregiver(s) actions an ability to maintain safety.

(2) The Department's findings under 110 CMR 4.32(1) form the basis of the Department's decision on the report. Based on these findings the Department determines whether the report is supported, is a substantiated concern, or is unsupported.

(a) A report if "Supported" if the Department determines:

1. There is reasonable cause to believe a child(ren) was abused or neglected, or was or is at substantial risk of being abused or neglected; and
2. The action or inactions by the parent(s) or caregiver(s) place the child(ren) in danger or present substantial risk to the child(ren)'s safety or well-being; or a person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking.

(b) A report is a "Substantiated Concern" if the Department determines:

1. There is reasonable cause to believe a child(ren) was neglected; and
2. The actions or inaction by the parent(s) or caregiver(s) create a moderate risk and there is a presence of contributing factors that increase the likelihood of the child(ren) being neglected.

(c) A report is "Unsupported" if the Department determines:

1. There is not reasonable cause to believe a child(ren) was abused or neglected, or the child(ren)'s safety or well-being is being comprised; or
2. The person believe to be responsible for the abuse or neglect was not a caregiver, unless the abuse or neglect involves sexual exploitation and/or human trafficking where the caregiver distinction is not applied.

(3) Definition of "Reasonable Cause to Believe": For the purposes of 110 CMR 4.32, "Reasonable Cause to Believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the 51A report allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information would lead one to conclude that a child(ren) has been abused or neglected.

(4) The Department documents its findings, including the final disposition, in the written 51 B response.

4.33 : Notice of Unsupported Response Decision

(1) When the Department determines a report is unsupported, the Department shall issue written notice of the response to the following interested persons, as applicable at their current or last address or email:

(a) The parent(s) or caregiver(s):

1. If both parents, have custody of the child(ren), notice will be sent to both parents.
2. If only one parent has custody of the child(ren) by court-order, notice will be sent only to the parent(s) with court-ordered custody of the child(ren).

(b) Collateral contacts whom the response worker contacted, only if the subject of the allegations requests notice be sent.

(c) If the source of the report was a mandated reporter, the mandated reporter receives a copy of the notice sent to the parent(s) or caregiver(s).

(d) The director or owner of a facility involved in a report containing an allegation of institutional abuse or neglect, which occurred at a facility owned, operated, or funded, in whole or in part, by any department or office listed in 110 CMR 4.30 (3), or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.30(3).

4.33: continued

(e) Other state agencies who received notice of the report during the screening process or 51B response.

4.34 : Notice of Supported or Substantiated Concern Response

(1) When the Department determines a report is supported or there is a substantiated concern, the Department shall issue written notice of the response to the following persons at their current or last known address or email, as applicable:

(a) The parent(s) or caregiver(s) of the child, within 48 hours of completing the response, except in circumstances addressed below in subdivision 110 CMR 4.34(1)(d).

1. If both parents have custody of the child(ren), notice will be sent to both parents.
2. If only one parent has custody of the child(ren) by court-order, notice will be sent only to the parent(s) with court-ordered custody of the child(ren).

(b) If the source of the report was a mandated reporter, the mandated reporter receives a copy of the notice sent to the parent(s) or caregiver(s).

(c) The District Attorney or local law enforcement, if required as a mandatory referral pursuant to M.G.L. c. 119, §51B (k); 110 CMR 4.51: *Mandatory Reporting to the District Attorney*, or if the Department determines as discretionary referral is necessary, pursuant to 110 CMR 4.52: *Discretionary Reporting to the District Attorney*.

(d) Any person who was the alleged perpetrator. The notice to the person identified as the alleged perpetrator includes the name of the child, the form of the abuse or neglect alleged, any form of abuse or neglect found to be supported, a statement as to whether the person has been listed in the Central Registry or the Registry of Alleged Perpetrators, and the right to a Fair Hearing in the event of such listing.

1. If the person identified as the alleged perpetrator is a child under the age of 18, the Department shall direct the written notice to the child and send a copy to the child's parent(s) or guardian(s).
2. Central Registry Listing: Where a response is supported, the Department shall provide written notice of the response within ten business days after completing the response informing the alleged perpetrator they will be listed on the Central Registry.
3. Registry of Alleged Perpetrators Listing: Where a response is supported, and the findings require the alleged perpetrator be listed on the Registry of Alleged Perpetrators, the Department shall provide written notice of the response within twenty business days after completing the

response, and after completing the mandatory referral to the District Attorney's Office, informing the alleged perpetrator they will be listed on the Registry of Alleged Perpetrators pursuant to 110 CMR 4.38: *Registry of Alleged Perpetrators Listing*.

(e) The Department shall notify other state agencies and the Office of Child Advocate (OCA) where required pursuant to 110 CMR 4.30(3) or a Memorandum of Understanding between the Department and that agency or the OCA.

(2) Notice of Supported Responses Involving Institutional Settings

(a) If a report involving an institutional setting is supported, the Department shall notify EEC, DESE, DMH, DDS, DPH, or DYS in writing by transmitting to the commissioner or director of that agency a copy of the 51A report and the Department's 51B response, if:

1. The Department has reason to believe that abuse or neglect may have occurred at a facility owned, operated, or funded, in whole or in part, by any of the agencies, or at a facility operated by a person or entity subject to licensure or approval by any of the said departments or offices.
2. If the EEC shares responsibility for licensing, funding or approving a facility, with one or more other state department(s) (DESE, DMH, DDS, DPH, or DYS), the Department shall always notify EEC of its response. The Department may, at the Regional Director's discretion, also notify DMH, DDS, DPH, or DYS.

(b) In any situation in which the Department notified EEC, DESE, DMH, DDS, DPH, or DYS in accordance with the previous paragraph, the Department shall also notify the OCA in writing who may review the documents in the Department's electronic case record.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.34: continued

(c) If as a result of a 51A report or 51B response, the Department discovers information or circumstances which may indicate poor quality of care provided to children, or licensing violations, in any facility operated by a person or entity subject to licensure or approval by EEC, DESE, DMH, DDS, DPH, or DYS; the Department shall:

1. Record such information involving the institution on the 51B response standard form;
2. Immediately communicate the information regarding poor quality of care or possible licensing violation to the agency in question; and
3. Send the agency in question a copy of the 51B response standard form, in circumstances where the response was supported.

(d) The Department shall notify in writing the director or owner of an institution of its response decision concerning a report of abuse or neglect in the institutional setting.

(e) If a request for copies of a 51A report or a 51 B response, pursuant to M.G.L. c. 119, § 51E, is made to the Department by an owner or operator or director of a child care facility, or any superintendent or director of public or private school, or any director of any community-connected residential facility (such as group care facilities, etc.), said owner or operator or director may, subject to approval of the Commissioner or designee, receive a copy of the 51A report or 51B response, regardless of whether the report has been supported, substantiated as a concern, or unsupported, if said report contains an allegation that an incident of abuse or neglect occurred on the premises of the child care facility, school or community-connected residential facility. However, before copies of the reports are released, the name of the reporter shall be redacted, in accordance with 110 CMR 12.00 *et seq.*: *Records*.

4.35: Institutional Settings: Coordination Between Agencies

(1) The Department shall make its employees available to testify at administrative hearings held by EEC, DESE, DMH, DDS, or DYS in connection with matters reported by the Department to any of said agencies pursuant to 110 CMR 4.34: *Notice of Supported or Substantiated Concern Response*.

(2) After the Department provides a copy of the 51A report and 51B response to any agency pursuant to 110 CMR 4.34: *Notice of Supported or Substantiated Concern Response*, the agency in question is responsible for any further action to ensure that adequate steps have been or will be taken to prevent reoccurrence of incidents of abuse or neglect of children in the institution in question. The Department remains responsible for monitoring the quality of services for any children who are in the care or custody of the Department and who are placed by the Department at the institution in question.

4.36: Central Registry Listing

(1) Pursuant to M.G.L. c. 119, §51F, the Department maintains a Central Registry that contains identifying information on children who were the subject of a report, and their families. The Registry also includes the outcome of any resulting response, including the name of any person found to be responsible for child abuse or neglect and the name of any individual listed in the Registry of Alleged Perpetrators.

(a) Whenever the Department find a 51A report to be supported and the person(s) responsible for the abuse or neglect is known, that person is named as the responsible person for the abuse or neglect in the Department's Central Registry.

1. If there is substantial evidence the person(s) named is responsible for the abuse or neglect and the report was referred to the District Attorney as a mandatory referral pursuant to M.G.L. c. 119, § 51B(k) and 110 CMR 4.51: *Mandatory Reporting to the District Attorney*, the identified person(s) is also listed on the Registry of Alleged Perpetrators.

(b) When the Department find a report to be substantiated concern or unsupported, the Department does not identify or enter an alleged perpetrator in the Central Registry.

4.37: Access to the Central Registry

(1) Department staff may have access to the Central Registry for the following purposes:

(a) Screening applications for employment, volunteer work or a student internship, with the Department, or one of its contracted providers, for a position with direct contact with clients and children;

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.37: continued

- (b) Screening applications to become foster or adoptive parents;
 - (c) Screening a 51A report;
 - (d) Conducting a 51B response;
 - (e) Assisting in providing services to any child in the care or custody of the Department; or
 - (f) Assisting in providing services to a family with an open case with the Department.
- (2) State child welfare agencies of another state may, upon request, receive information from the Central Registry for the following purposes:
- (a) Reviewing an application of a prospective foster or adoptive parent, or
 - (b) To carry out the agency's responsibilities under law to protect children from abuse and neglect.
- (3) The Department may enter into agreements with other state agencies to permit access to the Central Registry for the purpose of screening applications for employment, volunteering, internships, foster or adoptive parents, or other entities licensed by the agency, who may have positions involving unsupervised contact with children.
- (4) The Child Advocate shall have access to information contained in the Central Registry to fulfill the responsibilities of the Office of the Child Advocate, as specified in M.G.L. c. 18C.
- (5) Pursuant to the Fair Information Practices Act (FIPA), M.G.L. c. 66A, § 2(j), a data subject or duly authorized representative may contest the accuracy of the data maintained in the Registry of Alleged Perpetrators. Any data subject, or duly authorized representative, may obtain official confirmation or denial of the fact that the person's name appears in the Central Registry and a copy of the information maintained on the Central Registry by making a specific written request to the Fair Hearing Unit, pursuant to this provision accompanied by sufficient proof of identity. The person may direct that the information be provided to another individual, or agency.
- (6) No other individual, group, agency or department, including law enforcement, child welfare or educational agencies, may have access to the Central Registry without the written approval of the Commissioner, an order of a court of competent jurisdiction, or as authorized by M.G.L. c. 119, § 51F.

4.38: Registry of Alleged Perpetrators Listing

- (1) The Department shall pursuant to M.G.L. c. 18B, § 7(b) create and maintain a Registry of Alleged perpetrators as a component of the Central Registry. The Registry of Alleged Perpetrators shall be indexed by the name of the alleged perpetrator. The Registry of Alleged Perpetrators shall contain the following information on the alleged perpetrator:
- (a) Name;
 - (b) Date of Birth;
 - (c) Social Security Number;
 - (d) Sex;
 - (e) Address;
 - (f) Date of Listing;
 - (g) Allegation;
 - (h) Cross Reference to Victim; and
 - (i) Relationship to Victim.
- (2) The Department shall add a person to the Registry of Alleged Perpetrators if:
- (a) The Department determined a report of alleged child abuse or neglect is supported, and the Department referred the report to the District Attorney pursuant to M.G.L. c. 119, § 51B(k); and
 - (b) There is substantial evidence indicating the person to be listed in the Registry of Alleged Perpetrators was responsible for the abuse or neglect. Pursuant to M.G.L. c. 30A, § 1(6) substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion."
- (3) Once added to the Registry of Alleged Perpetrators, a person remains listed in the Registry for 75 years, unless the decision to list the person as an alleged perpetrator in the Registry is reversed pursuant to 110 CMR 10.00 *et seq.*: *Fair Hearing and Grievances*, or by a court of competent jurisdiction.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.39: Access to the Registry of Alleged Perpetrators

- (1) The Department staff may access the Registry of Alleged Perpetrators for the following purposes, only:
 - (a) Screening applications for employment, volunteer work or a student internship, with the Department, or one of its contracted Providers, for a position with direct contact with clients and children;
 - (b) Screening applications to become foster or adoptive parents;
 - (c) Screening a 51A report;
 - (d) Conducting a 51B response;
 - (e) Assisting in providing services to any child in the care or custody of the Department; or
 - (f) Assisting in providing services to a family with an open case with the Department.
- (2) The Department may, upon request, provide state child welfare agencies of another state, information from the Registry of Alleged Perpetrators for the following purposes:
 - (a) Reviewing an application of a prospective foster or adoptive parent, or
 - (b) To carry out the agency's responsibilities under law to protect children from abuse and neglect.
- (3) Pursuant to the Fair Information Practices Act (FIPA), M.G.L. c. 66A, § 2(j), the Department shall provide any person or duly authorized representative (the "data subject") with official confirmation of whether that person's name appears on the Registry of Alleged Perpetrators, and a copy of any information maintained on the Registry of Alleged Perpetrators on that person. To request information under FIPA, the data subject shall submit a written request to the Department's Fair Hearing Unit, accompanied by sufficient proof of identity.
 - (a) The data subject may direct the Department to provide the information to another individual, or agency.
 - (b) Pursuant to the Fair Information Practices Act (FIPA), M.G.L. c. 66A, § 2(j), the data subject or duly authorized representative may contest the accuracy of the data maintained in the Registry of Alleged Perpetrators.
- (4) The Child Advocate shall have access to information contained in the Registry of Alleged Perpetrators in order to fulfill the responsibilities of the Office of the Child Advocate (OCA), as specified in M.G.L. c. 18C.
- (5) The Department may release aggregate data for research purposes, upon written request. In responding to a research request, the Department shall remove all personally identifying information.
- (6) No other individual, group, agency or department, including law enforcement, child welfare or educational agencies, may have access to the Registry of Alleged Perpetrators without the written approval of the Commissioner, and order of a court of competent jurisdiction, or as authorized by M.G.L. c. 119, § 51E and 51F.
- (7) A state agency may have access to the Registry of Alleged Perpetrators for purposes of conducting an investigation of an allegation of child abuse or neglect pursuant to a duly promulgated regulation.

4.40 : Department Decision-Making Authority for Children in Custody Pursuant to a Court Order

The Department shall exercise the following rights and duties as to any child in the court-ordered custody of the Department, in addition to the rights and duties enumerated in M.G.L. c. 119, § 21 pertaining to the definition of "custody":

(1) Interview of Children: The Department's authority to allow an interview with a child in the Department's custody, pursuant to a court order, is limited under 110 CMR 4.40(1)(a) and (b). Interviews of a child conducted by social workers employed by the Department are not included in this subpart.

(a) Police Officer or a Representative of the District Attorney's Office:

1. The Department, foster or pre-adoptive parent(s) or other Department providers caring for the child(ren) in the Department's custody may not consent to having a child interviewed by a police officer or representative of the District Attorney's Office if the child is a possible or known defendant in a criminal action. A child considered by the Department to be a mature child, may not consent to such interviews on their own behalf. The Department may go to court and request the appointment of a *Guardian Ad Litem* with authority to determine whether the child should or will consent to participation in any kind of law enforcement interview or interrogation.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.40: continued

2. If a child is not a possible or known defendant in a criminal action, the Department shall exercise its clinical judgment to determine whether it is in the child's best interest to be interviewed by a police officer or representative of the District Attorney's Office and shall consent or deny an interview request on that basis.

(b) All Other Requests: The Department, upon receipt of any other interview request, shall make all reasonable efforts to consult with the parent(s).

1. If contact with the parent(s) is made, the Department shall honor the parent's(s') wishes, unless the Department determines that the parent's(s') wishes are contrary to the best interests of the child.

2. If the Department is unable to contact the parent(s), the Department may not consent to such interviews, unless there are special circumstances under which the interview would further the best interests of the child, in which case the Department may consent.

(2) School Permissions: If the child is enrolled in a public school, private school, group care facility, childcare facility, residential placement, or other such facility, the facility may request or require the execution of a consent form for a variety of activities, including sports participation, field trips, and driving forms. The Department, foster parent(s) may exercise judgment to determine whether it is in the child's best interests to sign the form, and may consent or deny on that basis.

(3) Permits, Licenses: The child may wish to obtain various permits or licenses, including hunting and fishing permits, driver's and motorcycle licenses. If a permit or license requires parental consent, the Department shall exercise its clinical judgment to determine whether it is in the child's best interests to obtain such permit or license, and the Department will consent or deny on that basis.

(4) For all Issues Related to Medical Authorizations: All requests for consent related to medical authorizations will be addressed pursuant to 110 CMR 11.00: *Medical Authorizations*.

(5) Religion: The Department, including foster parents, may not procure or authorize any religious ceremony for any minor child in its custody, absent authorization from the child's parent(s) or order of the court.

4.50 : Working with the District Attorney and Law Enforcement

(1) M.G.L. c. 119, §§ 51B(k) requires that the Department notify and provide information to the appropriate District Attorney and local law enforcement concerning certain enumerated conditions caused by child abuse or neglect, or if the child may be a victim of human trafficking or sexual exploitation. The Department may, on a discretionary basis, notify the District Attorney or local law enforcement concerning other possible criminal conduct.

(2) The Department encourages and supports coordination of responses among the Department, law enforcement and prosecutors in cases referred to the District Attorney or law enforcement to minimize the impact investigation activity on a child(ren) who is a victim of child abuse or neglect and to reduce the risk of loss or destruction of evidence.

(a) The Department supports the use of Multi-Disciplinary Services Teams (MDSTs) in its response to allegations of sexual abuse, sexual exploitation, human trafficking and serious physical abuse or death as a result of abuse or neglect.

(b) The Department may enter into a Memorandum of Understanding with any law enforcement agency, or with the local District Attorney's Office for the purpose of developing working protocols to coordinate its response in conjunction with law enforcement investigation or in conjunction with cases referred to the District Attorney's Office.

4.51 : Mandatory Reporting to the District Attorney

(1) The Department shall immediately notify the District Attorney and local law enforcement when evidence during the screening process the 51B response, indicates that one of the conditions listed in M.G.L. c. 119, § 51B(k) or below has occurred as a result of abuse or neglect.

(a) A child has died;

(b) A child has suffered brain damage, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;

(c) A child has been sexually assaulted, which includes crimes under M.G.L. c. 265, §§ 13B, 13B.5, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B and M.G.L. c. 272, § 35A.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.51: continued

(d) A child has been sexually exploited, which includes crimes under M.G.L. c. 272, §§4A, 4B and 29A or is a victim of human trafficking;

(e) A child has suffered serious physical abuse or sexual abuse or an injury that includes, but is not limited to:

1. A fracture of any bone, severe burn, impairment of any organ, or any other serious injury;
2. An injury requiring the child to be placed on life support systems;
3. Any other disclosure of physical abuse involving physical evidence which may be destroyed;
4. Any current disclosure by the child of sexual assault; or
5. The presence of physical evidence of sexual assault.

(2) The Department shall notify the District Attorney and local law enforcement for the county where the child resides, and for the county where the offense occurred, within five business days of the Department's 51B supported response, finding one or more of the conditions listed in M.G.L. c. 119, § 51B(k) or 110 CMR 4.51(1) occurred as a result of child abuse or neglect.

(3) For all mandatory referrals, the Department shall provide the District Attorney and local law enforcement with copies of the 51A reports and the completed 51B responses, as soon as available.

(4) Mandatory Reporting in Non-Caregiver Circumstances: If the Department screens out or the alleged perpetrator did not meet the definition of caregiver, but the 51A report alleges one or more of the categories under M.G.L. c. 119, § 51B(k), or in 110 CMR 4.51(1), the Area Director or designee shall, no later than five business days after its determination, notify the District Attorney, and local law enforcement authorities for the county where the child resides and for the county where the offense occurred, by providing copies of the completed 51A report and the completed 51B response, if applicable.

4.52: Discretionary Reporting to the District Attorney

(1) The Department may refer other 51A reports or information to the District Attorney and local law enforcement, if such matters involve serious criminal conduct that may impact the safety and well-being of children (including but not limited to cases of abuse or neglect resulting in conditions other than those listed 110 CMR 4.51(3), or pose a serious threat to public safety generally..

(2) Discretionary referrals must be approved by the Area Director or the SIU Director, and may be made at any point in the Department's involvement with a family as soon as the Department becomes aware of information warranting referral.

4.53 : Procedures

(1) After making a mandatory or discretionary referral a District Attorney, the Department may provide documentation or discuss information obtained by the Department in connection with the 51A report or 51B response with the District Attorney.

(a) Upon request from the District Attorney, the Department shall release additional documents from the Department's files to the District Attorney, if the Commissioner or designee determines that:

1. The requested documents are directly relevant to the investigation or prosecution of the matter referred to the District Attorney; and,
2. Release would not be contrary to the best interests of the child(ren) in question.

(2) Prior to completing the Department's 51B response, the Department should not inform the family when the Department notifies or refers to the District Attorney(s) and local law enforcement authority(ies), unless notification is necessary to schedule victim interviews. The response worker may inform the family a referral to the District Attorney and law enforcement is a possible outcome of the response. Following completion of the Department 51B response, the Department shall follow notification procedures as defined in 110 CMR 4.33 through 4.34 and applicable policies.

(3) Any documents from the Department files which are subpoenaed directly from the Department for a criminal matter to which the Department is not a party, are governed by judicial determinations as set forth in the procedures described in the Appendix of *Commonwealth v. Dwyer*, 448 Mass. 122 (2006). Department files and documents contained therein, are designated confidential pursuant to M.G.L. c. 119, §§ 51E - 51F and M.G.L. c. 66A and M.G.L. c. 112, §§ 135 - 135B as applicable, and a specific order is required to produce Department records in a criminal manner.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.54 : Multi-Disciplinary Service Team (MDST)

(1) Where a 51A report is referred to the District Attorney pursuant to 110 CMR 4. 51: *Mandatory Reporting to the District Attorney* or 110 CMR 4.52: *Discretionary Reporting to the District Attorney*, the Area Director and the District Attorney shall determine whether a review by a MDST would be beneficial.

(a) A MDST shall include the currently assigned Department employee, the Department supervisor (if requested), a representative of the District Attorney, and at least one other member who is not employed by either the Department or the District Attorney. The independent team member shall be appointed by the Area Director, shall have experience and training in the field of child welfare or criminal justice, and shall otherwise meet the guidelines established by the Department.

(b) If the referral involves a victim of sexual exploitation or human trafficking, the MDST may also include a professional trained or otherwise experienced or qualified to assess the needs of sexually exploited children or human trafficking victims including, but not limited to, a police officer or designee of the police chief, a social services provider, a medical professional, or a mental health professional.

(2) Members of MDST shall have full access to the Department's action plan and any information from the family's Department case file that is directly related to the implementation of the Action Plan. The data shared with MDST shall be confidential and shall be utilized by the members solely to carry out the responsibilities of the MDST.

(3) The MDST shall meet on a schedule determined by the Department and the District Attorney's Office, and during such meetings shall:

- (a) Discuss the current status of the child and family and any intervention initiated;
- (b) Discuss any existing action plan for the family;
- (c) Make recommendations as to the advisability of prosecuting any members of the family;
- (d) Discuss the possible effects of prosecution on the child and attempt to minimize the possibility of multiple interviews of the child;
- (e) Explore the possibility of utilizing any existing diversion programs; and
- (f) For cases involving sexually exploited or human trafficking child victims, determine if the child was a victim of sexual exploitation or human trafficking and, if so, recommend a plan for services, which may include shelter or placement, mental health services, and medical care or other services as needed.

(4) The MDST may notify the District Attorney when a family has failed to participate or cooperate in the action plan.

4.60 : Scope 110 CMR 4.60 through 4.67

110 CMR 4.60 through 4.67 sets forth the Department's responsibilities to children and their families under the Children Requiring Assistance (CRA) statute found at M.G.L. c. 119, §§ 39E through 39J.

4.61 : General Provisions

(1) After an application for a case is filed, the Department's involvement with the child who is the subject of the CRA begins due to any of the following:

- (a) Court referral;
- (b) Court-ordered pre-trial detention;
- (c) Court-prescribed services; and
- (d) Court-ordered commitment of the child to the custody of the Department.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.62 : Court Referral

- (1) A probation officer of a court in which a CRA application was filed may refer the child or the child's family to the Department for services by instructing the child or the child's family to contact the Department and apply for services.
- (2) Where a child, or the child and the child's parent(s), apply for Department services, as a result of a court referral, the Department shall treat the application in the same manner as a voluntary application for services, (110 CMR 4.01 through 4.11).
- (3) The Department shall assess a referred child to determine if the child has mental health issues and is in danger of serious harm if not hospitalized, in which case the child should be the subject of an application for a commitment hearing before a district court under M.G.L. c. 123, § 12. Upon such determination, the Department shall immediately inform the referring probation officer of the Department's opinion that the referred child is mentally ill and without hospitalization serious harm is likely.
- (4) If any child is referred to the Department for services under circumstances which indicate the child may be in need of care and protection, the Department shall hold a case conference determine if legal action is warranted, and thereafter the Department may initiate court proceedings under M.G.L. c. 119.

4.63 : Court-Ordered Pre-Hearing Temporary Custody

- (1) If a court finds a child who is alleged to require assistance by reason of repeatedly refusing to obey the lawful and reasonable commands of a parent is not likely to appear at the fact finding hearing on the CRA petition, the court may release the child with terms and conditions to the custody of the parent(s) or may place the child in the temporary custody of the Department, only if, prior to granting temporary custody, the court makes the written certifications and determinations under M.G.L. c. 119, § 29C, that:
 - (a) it is contrary to the welfare of the child to be in the child's home; and
 - (b) that the Department made reasonable efforts to prevent removal from the home or the existing circumstances indicate that there is an immediate risk of harm or neglect that precludes the provision of preventative services as an alternative to removal.
- (2) Where a court has made determinations under M.G.L. c. 119, § 29C and placed a child in the temporary custody of the Department, the pre-hearing temporary custody order is valid for only 15 days at which time the child, parent(s) and the Department must appear before the court for a hearing on whether the temporary custody order should be continued for another 15 days. No such pre-hearing temporary custody may last longer than 45 days.
- (3) When a child has been placed in the Department's custody, the Department determines the placement of the child.

4.64 Court-prescribed Services, Without Custody to Department)

- (1) Where a child has been adjudicated in need of assistance, the court convenes a conference, which includes the child, the child's parent(s), the child's attorney, the probation officer, and other persons set forth in M.G.L. c. 119, §39G including a representative from the family resource center, if involved with the family, and staff from the Department. The purpose of the conference is to make recommendations to the court on the appropriate treatment and services for the child and family.
- (2) The Department may provide any recommended available services if, the Department determines in its clinical judgment the services are appropriate for the child and/or the child's family.
- (3) If the court orders the Department to provide specific services, treatment or placement, the Department shall notify its legal counsel. Until such time as the court's order is vacated, changed, or dismissed, the court's order shall be complied with, if the services are available and to the extent the Department is reasonably able to comply.

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.65 : Court-Ordered Post-Hearing Custody to Department

- (1) After a fact-finding hearing on a CRA petition, a child may be adjudicated to be in need of assistance. Pursuant to M.G.L. c. 119, § 29C, the court may place the child in the custody of the Department for a period of 120 days and may extend the commitment for a 90-day period 3 times for a total commitment period not to exceed 390 days.
- (2) Following such a dispositional order, the child shall be considered to be in the temporary custody of the Department.
- (3) The Department shall determine the placement of the child, which may include the home of the child's parent(s) unless substitute care would better serve the child's interests. The Department may not refuse an out-of-home placement if recommended by the court as long as the court has made the determinations required by M.G.L. c. 119, § 29C. However, the Department shall determine the type and length of such out-of-home placement. The Department shall also give consideration to a request by the child that they be placed outside the home of a parent or guardian when there is a history of abuse and neglect in the home of the parent or guardian.
- (4) If the court orders the Department to provide specific services, treatment or placement, the Department shall notify its legal counsel. Until such time as the court's order is vacated, changed or dismissed, the court's order shall be complied with, if the services are available and to the extent the Department is reasonably able to comply.
- (5) Where a child has been placed in the custody of the Department after a CRA adjudication, the Department shall complete or update a family assessment and action plan in accordance with 110 CMR 5.00: *Assessment*, as applicable.
- (6) When determining the tasks, services and supports in the action plan, the Department's social worker shall include other interested persons such as relatives, friends, or community agencies who may be willing to provide helpful services.
- (7) Where a child's action plan will affect the child's educational placement, the Department social worker shall consult with the child's school system in the development of such plan. This consultation shall occur prior to placement except in emergencies. Whenever the Department social worker had reason to believe a child is in need of special education, the Department social worker shall initiate a request for an evaluation of the child under procedures set forth in the Department's Education Policy.

4.67: Department Employees at CRA Court Proceedings

Members of the Department's social work staff may attend all CRA court proceedings if informally requested to do so by a Court, but must attend the CRA court proceedings if formally subpoenaed. Members of the Department's legal staff shall attend CRA court proceedings, where an Area or Regional Director has requested counsel to attend.

REGULATORY AUTHORITY

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| 110 CMR 4.01: | M.G.L. c. 18B, § 4 and 7(i); c. 119, § 23(A) and c. 210, § 2; |
| 4.20: | M.G.L. c. 119, §§ 51A, 51B; |
| 4.40: | M.G.L. c. 119, §§ 51A through F; M.G.L. c. 66A; |
| 4.50: | M.G.L. c. 119, §§ 51A, B, and D; |
| 4.60: | M.G.L. c. 119, §§ 39E through 39J; |
| 4.70: | M.G.L. c. 18B. |