COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Florence F.,[1]
Petitioner,

v.

Department of Early Education and Care,
Respondent.

Docket No.: OC-25-0622

Dated: April 8, 2026

Appearances:
For Petitioner: pro se
For Respondent: Stephanie Collamore, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF RECOMMENDED DECISION

The petitioner operates a home-based daycare program. Her husband committed serious crimes nearly fifty years ago. He is now nearly seventy years old. He works outside the home during the daycare program's hours of operation. He is suitable to be a member of the petitioner's household.

RECOMMENDED DECISION

The petitioner is licensed by respondent the Department of Early Education and Care (department) to operate a daycare program. Among the members of the petitioner's household is her husband. This is the petitioner's appeal from the department's determination that the husband is unsuitable to be a household member of a daycare program. I held an evidentiary hearing on February 19, 2026, at which the witnesses were the petitioner, the

[1] A pseudonym adopted under a separate order for the purpose of preserving the effect of the court system's decision to seal certain criminal-history records. *See infra* note 3. *See generally Doe v. Massachusetts Inst. of Tech.*, 46 F.4th 61, 71-72 (1st Cir. 2022).

husband, and department employee Sylvia Barragan. I admitted into evidence the petitioner's exhibits 1-12 and the department's exhibits 1-18.

Findings of Fact

I find the following facts.

1. In March 1978, the husband was prosecuted for unlawful possession of a firearm. After a guilty plea or verdict, he was sentenced to eight months of imprisonment. The record sheds no additional light on the facts and circumstances of the offense. (Resp. ex. 1.)

2. In October 1978, the husband was prosecuted for: assault and battery with a dangerous weapon; larceny of a motor vehicle; and kidnapping. After a guilty plea or verdict, he was sentenced to ten years of imprisonment. The record sheds no additional light on the facts and circumstances of the offenses. (Resp. ex. 1.)

3. The husband faced eight additional charges during the 1970s. In 1972, as a juvenile, he was charged with breaking and entering. In 1974, still as a juvenile, he was charged with rape. In March 1978, together with his firearm offense, the husband was charged with: armed robbery; assault and battery with a dangerous weapon; larceny of a motor vehicle; kidnapping; and use of a vehicle without authority. In March 1979, he was again charged with assault and battery with a dangerous weapon. These additional prosecutions ended without convictions, guilty pleas, or other admissions. No record evidence sheds additional light on their facts and circumstances. (Resp. exs. 1, 5.)

4. Once in 1987, once in 1991, and once in 1996, the husband was prosecuted for criminally reckless or negligent driving. Each of the cases resulted in a guilty plea or verdict.

Each time, the husband was sentenced to 30 or 60 days of imprisonment. The record sheds no additional light on the facts and circumstances of the offenses. (Resp. exs. 1-4.)

5. For the last thirty years, the husband has stayed out of trouble with the law. He has maintained full-time employment. He is now sixty-eight years old, retired from one job but still working at another. His remaining position is at a warehouse, five days a week, from 5 a.m. to 5 p.m. The husband and the petitioner met more than twenty years ago. At some point, they began to live together. Today they reside with their daughter and their nine-year-old granddaughter. (Pet'r ex. 7; resp. ex. 15; pet'r test.; husband test.)

6. The petitioner runs a home-based daycare program, five days a week, from 9:30 a.m. to 5:00 p.m. She first became licensed to operate her program in 2004. In 2025, the department ran a background check on the husband, apparently for the first time. A criminal records query disclosed the information described in paragraphs 1-4.[2] (Pet'r exs. 1, 2; resp. ex. 8; Barragan test.)

7. The husband collected and gave the department the court records that he could find from his various criminal cases. The courts have destroyed many of the records. In his background-check form, the husband did not discuss the details and circumstances of his convictions and non-convictions. He did provide the department with reference letters from five family members and friends. Letters from seven additional individuals are in the current

[2] The husband's juvenile and adult records were subsequently sealed. But the department is authorized to access "sealed record data" for the purpose of "evaluating . . . any child care provider." G.L. c. 6, § 172F. It is prudent to assume for present purposes that the pertinent evaluations include background checks of licensees' household members. *See* 606 C.M.R. §§ 14.04, 14.09(2)(a).

record. Highlights from them are sufficient for present purposes. The husband's supporters call him "highly responsible, disciplined, and trustworthy." They see him as a "kind and caring" individual. They praise his "integrity and . . . commitment to being a law-abiding citizen." Acknowledging the husband's criminal history, his references say that he "has learned from those experiences," "has worked diligently to improve himself," and has "maintained a stable and productive life for decades." The husband's stepdaughter works in early education and care: during twenty years of "continuous contact" with the husband, she has "never witnessed any behavior that would suggest he poses a risk to any child." The husband's daughter reports that he is an "exemplary, loving, and protective grandfather." Capturing the views of her fellow letter-writers, she adds: "He has maintained a life of rehabilitation and responsibility for over 40 years and poses no threat to any child." (Pet'r ex. 4; resp. exs. 1, 6, 9-12, 16-18; husband test.; Barragan test.)

8. A reviewer for the department counted fifteen potentially disqualifying items in the husband's criminal history. She determined that the husband is unsuitable to be a household member of a home-based daycare program. That determination was ratified by the reviewer's supervisors. The petitioner timely requested a hearing. (Pet'r ex. 3; Resp. ex. 1, 13, 14; Barragan test.)

Analysis

I. Department Licensure

Early education and care programs in Massachusetts may operate only under licenses from the department. G.L. c. 15D, §§ 6-7. The department is authorized to promulgate regulations about the circumstances in which it will deny licenses to applicants. *Id.* § 10. Under

those regulations, the department must run background checks both on applicants and on their "household members." 606 C.M.R. §§ 14.04, 14.09(2)(a).

The potential findings of a background check are assigned to three categories, namely "mandatory," "presumptive," and "discretionary" disqualifications. *Id.* § 14.10. The circumstances that generate discretionary disqualifications include "convictions," "non-convictions," and "pending . . . charges" relating to a published list of criminal offenses. *Id.* § 14.10(6). *See also id.* § 14.04.[3]

In the case of a discretionary disqualification, the regulations direct the department to consider the following factors:

1. Time since the incident(s);
2. Age of the candidate at the time of the incident(s);
3. Seriousness and specific circumstances surrounding the incident(s);
4. Relationship of the incident(s) to the ability of the candidate to care for children;
5. Number of criminal offenses or findings of abuse/neglect;
6. Dispositions of criminal offenses and findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and

[3] This decision adopts the parties' shared view that none of the items in the husband's criminal history resulted in a "mandatory" or "presumptive" disqualification. *See Medi-Cab of Massachusetts Bay, Inc. v. Rate Setting Comm'n*, 401 Mass. 357, 364 (1987). *See also Clark v. Sweeney*, 607 U.S. 7, 9-10 (2025). The department did not take up an invitation to elaborate on this point in its closing brief. Regardless, it appears that any mandatory disqualification of the husband would have become presumptive once the pertinent court records were sealed, 606 C.M.R. § 14.10(2), (5)(a), with the result that the same eight-factor analysis discussed in this decision would apply, *id.* § 14.12(2).

8. Other relevant information, including information submitted by the candidate.

Id. § 14.12(2)(f). For purposes of its analysis, the department is authorized to collect police reports, docket sheets, candidate statements, reference letters, and other materials. *Id.* § 14.12(2)(c). Ultimately, the department must determine whether the individual has presented "clear and convincing evidence demonstrating [his or her] suitability for licensure . . . in light of the concern for children's safety." *Id.* § 14.12(2)(e).

When a household member of a licensee has been found unsuitable, the licensee himself or herself is entitled to an adjudicatory hearing before DALA. *See* 606 C.M.R. § 14.14(2), (3). The proper character of the hearing has been the subject of debate. The department's hearing counsel maintains that the department's determination is reviewable only for abuse of discretion. *See Aguilar v. Department of Early Educ. & Care*, No. OC-23-251, 2023 WL 9022704, at *4 & n.4 (Div. Admin. Law App. Dec. 21, 2023). But the majority view at this time is that DALA must freshly evaluate each case based on the appellate record. In essence, DALA's evidentiary proceedings and procedural safeguards serve their purposes only if the ensuing decision is truly rooted in them. *See Gonzalez v. Department of Early Educ. & Care*, No. OC-25-251, 2026 WL 539320, at *4-8 (Div. Admin. Law App. Feb. 19, 2026); *Aguirre v. Department of Early Educ. & Care*, No. OC-24-598, 2026 WL 446272, at *5 n.3 (Div. Admin. Law App. Feb. 6, 2026); *Department of Early Educ. & Care v. Jarominski*, No. OC-22-329, 2023 WL 9022703, at *7 (Div. Admin. Law App. Dec. 21, 2023). *See also Amari v. Rent Control Bd. of Cambridge*, 21 Mass. App. Ct. 598, 599-602 (1986).

II. Unproven Charges

Among the fifteen criminal charges that the department identifies as potentially disqualifying of the husband are his eight non-convictions in the 1970s. These items warrant their own analysis.

Under the applicable regulations, non-convictions of certain crimes do trigger the discretionary review process. 606 C.M.R. §§ 14.04, 14.10(6). Among the data points that the department must consider in that process are the "specific circumstances surrounding the incident(s)." *Id.* § 14.12(2)(f)(3). Those circumstances may be illuminated by the reports, statements, and other documents that the department is authorized to collect. *Id.* § 14.12(2)(c). Such materials may sometimes suffice to show that a crime occurred even in the absence of a conviction. *See Andino v. Department of Early Educ. & Care*, No. OC-25-103, 2025 WL 3127144, at *11 (Div. Admin. Law App. Oct. 22, 2025).

As for the criminal charges themselves, they must not be treated as evidence of wrongdoing. The authors of indictments and complaints mean for those documents to convey no more than accusations. *See De Golyer v. Commonwealth*, 314 Mass. 626, 631 (1943); *Commonwealth v. Woodward*, 157 Mass. 516, 518 (1893). *See also* Superior Court Model Jury Instructions (2021); Criminal Model Jury Instructions for Use in the District Court (2009). Charging documents have "no probative value or evidentiary significance." *Commonwealth v. Rodriguez*, 92 Mass. App. Ct. 774, 783 (2018). *See Commonwealth v. Kelley*, 33 Mass. App. Ct. 934, 934 (1992). It follows that they are not "the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G.L. c. 30A, § 11(2). *See Andino*, 2025 WL 3127144, at *11.

In our system of government, it is not acceptable for people to be deprived of liberty or property based on unsubstantiated accusations. All actions of government agencies must instead be grounded in real evidence. *See* G.L. c. 30A, § 14(7)(e). *See also Steadman v. Securities & Exch. Comm'n*, 450 U.S. 91, 98 (1981). Even in civil proceedings, the government cannot treat people as if they have committed wrongdoing when no evidence so demonstrates. *See generally Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170-72, 174-79 (1951) (Frankfurter J., concurring; Douglas, J., concurring); *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025).[4]

The department's reviewer was asked at the hearing whether she had seen any indications that the husband was guilty of the charges that led to his non-convictions. She did not know. But the question of a person's culpability is foundational. It gives meaning to the other aspects of the analysis. Unless there is evidence that the allegations against a person are true, it makes no difference whether the allegations are numerous or few, serious or minor, recent or nonrecent, reinforced or offset by other events or character traits. If no evidence discloses wrongdoing, the regulatory scheme cannot rationally produce a determination of unsuitability.

As a matter of language, it may be that the regulations are susceptible to an alternative reading, i.e., one that allows the department to deny or revoke licenses based on accusations alone. But interpretive principles weigh against a construction that would leave the

[4] The delicate situation of still-pending charges is beyond the scope of this decision. As a general proposition, emergent circumstances may empower agencies to act on lower-than-usual evidentiary standards, though only temporarily. *See generally* G.L. c. 30A, § 13.

department's operations anomalous and constitutionally dubious. *See Matter of Chapman*, 482 Mass. 293, 305-06 (2019). It is more specifically improbable that, when they refer to proof by "clear and convincing evidence," the regulations mean to impose a duty on applicants to prove their innocence. It is only when the evidence discloses wrongdoing that applicants properly may be asked to demonstrate that they remain suitable to be around children. *See Andino*, 2025 WL 3127144, at *11; *Fournier v. Department of Early Educ. & Care*, No. OC-24-508, 2025 WL 1092640, at *8 (Div. Admin. Law App. Apr. 1, 2025). *See also Doe v. Sex Offender Registry Bd.*, 473 Mass. 297, 309-11 (2015).

No record evidence indicates that the husband committed the eight crimes for which he was prosecuted unsuccessfully. Those events cannot be held against him for purposes of evaluating his suitability to reside in the petitioner's home.

III. Proven Charges

The remaining items in the husband's criminal history must be analyzed by reference to the regulatory catalog of pertinent factors, 606 C.M.R. 14.12(2)(f). Two factors weigh powerfully against the husband's suitability. He was convicted of kidnapping and other very serious crimes punishable by lengthy maximum sentences (factor 3). And the total number of his offenses, i.e., seven over an eighteen-year period (1978-1996), is considerable (factor 5).

Limited significance can be attributed to the "specific" circumstances of the incidents (the second piece of factor 3). That is because the record contains no evidence at all about those circumstances. It is true that the husband could have chosen to fill in the gaps; an applicant's silence may tend to indicate that if the facts had been disclosed, they would have weighed against the application. *See Phillips v. Chase*, 201 Mass. 444, 450 (1909). But in the

circumstances presented, I am persuaded that the husband's reticence reflected a reluctance to excavate and relive his severe transgressions of decades ago. *See also Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 479-80 (1963). The husband's crimes must be treated as serious because of their general gravity and heavy punishments, not their case-specific details.

The countervailing considerations in the husband's favor ultimately are overwhelming. Thirty years have gone by since his three reckless-driving offenses; his more serious crimes occurred nearly half a century ago (factor 1).[5] He was a young man at the time, whereas he has now reached retirement age (factor 2).

The relationship between the husband's criminal history and his "ability . . . to care for children" (factor 4) is implicated for a reason identified by the department's reviewer and hearing counsel: this regulatory factor implicitly covers the point that the husband is not seeking to "care for children" at all. He is absent from the petitioner's home throughout her hours of operation. It would be improper to ignore this "important aspect of the problem." *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The husband's case cannot be judged through exactly the same prism applicable to hands-on childcare providers.

A final key consideration is "evidence of rehabilitation" (factor 7). The reviewer's testimony that she saw no such evidence is bewildering. A person is rehabilitated when he or she stops committing crimes and returns to a law-abiding, constructive life. *See United States v.*

[5] By way of comparison, individuals who have not committed newer crimes generally may have the records of their convictions sealed either three years, seven years, or fifteen years after sentencing (depending on the offense). *See* G.L. c. 276, § 100A. *Cf. supra* note 3.

Torres, 464 F. Supp. 3d 651, 663-64 (S.D.N.Y. 2020); *State v. A.R.H.*, 530 P.3d 897, 904 (Or. 2023); *Thompson v. Texas Dep't of Licensing & Regul.*, 455 S.W.3d 569, 572 (Tex. 2014). A string of individuals attested from firsthand knowledge to the husband's lawfulness, integrity, and trustworthiness. He has not been associated with any crimes for decades. More convincing evidence of rehabilitation is hard to imagine.

The husband is nearly seventy years old. He committed his serious crimes nearly fifty years ago. He is rehabilitated. He will not be present during the daycare program's hours of operation. These salient points present clear and convincing evidence that the husband is suitable to be a member of the petitioner's household.

Conclusion

It is my recommended decision that the husband is suitable to be a household member of the home out of which the petitioner operates her daycare program.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals