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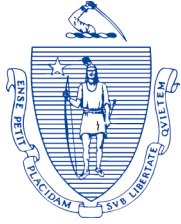
# **Legislative Report on Fair Hearings in the Department of Children and Families**

**As Required Chapter 133 of the Acts of 2017**

**January 2018**



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LEGISLATIVE REPORT ON FAIR HEARINGS IN THE  
MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES

This document fulfills the requirements of line item 4800-0015 of Chapter 133 of the Acts of 2017 that requires the Department of Children and Families to report on:

...provided further, that the department shall report to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities on December 29, 2017 and March 30, 2018 on: (i) the fair hearing requests filed in fiscal year 2018, stating for each hearing request using non-identifying information: (a) the subject matter of the appeal; (b) the number of days between the hearing request and the first day of the hearing; (c) the number of days between the first day of the hearing and the hearing officer's decision; (d) the number of days between the hearing officer's decision and the agency's final decision; (e) the number of days of continuance granted at the appellant's request; (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request; and (g) whether the departmental decision that was the subject of the appeal was affirmed or reversed; and (ii) the fair hearing requests filed before fiscal year 2018, which are pending for more than 180 days, stating the number of those cases, how many of those cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision; provided further, that the department shall maintain and make available to the public, during regular business hours, a record of its fair hearings, with identifying information removed, including for each hearing request: the date of the request, the date of the hearing decision, the decision rendered by the hearing officer and the final decision rendered upon the commissioner's review;...

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## **Part I. Introduction to Fair Hearings**

As with administrative hearings in other agencies, Fair Hearings at the Department of Children and Families provide an opportunity for consumers to appeal certain decisions made by the agency. The process is governed by M.G.L. c.30A, similar to administrative appeals within other state agencies, and also by 110 CMR 10.00 et. seq. of the Department's regulations.

Matters subject to Fair Hearing include:

- Appeal of a Supported Abuse and/or Neglect Finding
- Appeal of a Supported Abuse and/or Neglect Finding in an Institution
- Denial of Foster Parent License Study
- Case Closing
- Removal of Child from Foster Parent
- Appeal of a Supported Abuse and/or Neglect Finding by a Foster Parent
- Foster Care Review Goal Determination
- Adoption Subsidy Reduction or Termination
- Alleged Perpetrator Listing
- Removal of Child from Pre-Adoptive Home
- Denial of Adoptive Parent License Study
- License Revocation of foster/pre-adoptive home
- Reduction of Services
- Daycare Denial
- Failure to Follow Regulations
- Any action or inaction involving the placement of children across state lines pursuant to the Interstate Compact on the Placement of Children (ICPC)
- Dispute as to the Sliding Fee for services calculated by the Department

Appellants are able to employ an attorney to assist them during this process if they would like, but it is not required as a function of a Fair Hearing and most individuals do not currently retain an attorney in the defense of their claim. These informal hearings do not follow the Massachusetts Rules of Evidence so the rules regarding what can/cannot be admitted are more flexible. The hearings are not as formal as a court proceeding.

Upon issuance of the Fair Hearing decision, the Appellants also have an additional right of appellate review to the Superior Court pursuant to M.G.L. c.30A.

It is important to note that often while the Fair Hearing process is occurring, there is a parallel but separate process occurring in the Juvenile or Probate and Family Court which relates to the custody of the child or children. While those same children may be the subject of the Fair Hearing, the two processes are separate and distinct. The Juvenile or Probate and Family Court Judge is the arbiter of all custody and placement decisions relative to a child, based upon a finding regarding the parental fitness of the child's parents, as well as a determination as to what is in the best interests of the child. The scope of a Fair Hearing decision is limited; it does not supersede the Court's authority in determining what placement is in the best interest of a child, whether that placement is at home with parents, or in a particular foster or adoptive home. The

number of Fair Hearing requests filed on an annual basis increased significantly from 2013 to 2014, and remained elevated through 2015 and 2016. However, from CY 2016 to CY 2017, there has been a 19% decrease in filings.

**Table 1: Number of Fair Hearing Requests by calendar year**

<b>Annual filings by calendar year</b>	
<b>Year</b>	<b>Number of filings</b>
2007	1868
2008	2156
2009	1899
2010	1398
2011	1220
2012	1188
2013	1344
2014	1947
2015	1796
2016	1984
2017	1612

**Part II. Response to Legislative Request**

The information that follows provides a detailed response to the statutory request; **(i) for fair hearing requests filed in fiscal year 2018:**

**(a) Subject matter of the appeal**

Table 2 (below) shows that the vast majority of 678<sup>1</sup> requests for Fair Hearing filed thus far in Fiscal Year 2018 are appeals of supported abuse and/or neglect findings, (a combined 540<sup>2</sup> requests or 80%). This data is located in the attached FY2018 Fair Hearing Docket under within the “Reasons for Fair Hearing Appeal” columns M – EE. The count from FY 2017 has also been provided for comparison.

These Fair Hearing requests on supported abuse and neglect findings represent a fraction of the total number of reports of abuse and/or neglect received over the course of a year. To date in FY18 there have been 7379 supported cases. And, as noted above, there have been 540 appeals of these cases (7%).

The next most common subject matter for appeal is the case closing of a young adult (12 requests) followed by the removal of a child from a foster home, (10 requests). A full listing of the allowable grounds for appeal can be found in 110 CMR 10.06.

<sup>1</sup> This is the total number of filings from July 1, 2017 to December 1, 2017 on the attached FY2018 Fair Hearing Docket.

<sup>2</sup> This is the total of Supported Abuse/Neglect Findings for a caretaker, an institution and foster parents.

**Table 2. Subject of DCF Fair Hearings Requested  
(FY18 to date, 7/1/2017 – 12/1/2017)**

<b>Subject of Fair Hearing Requests</b>	<b>Definition of Subjects</b>	<b>Count of Fair Hearing Requests FY17 (7/1/16 to 12/6/16)</b>	<b>Count of Fair Hearing Requests FY18 (7/1/17 to 12/1/17)</b>
Appeal of a Supported Abuse and/or Neglect Finding on a Caretaker	Count of Appellant / Reasons of 51A Caretaker	531	514
Appeal of a Supported Abuse and/or Neglect Finding on a Foster Parent	Count of Appellant / Reasons of 51A Foster parent	14	10
Appeal of a Supported Abuse and/or Neglect Finding at an Institution	Count of Appellant / Reasons of Institutional Abuse	42	16
Denial of Adoptive Parent License Study	Count of Appellant / Reasons of Adoptive Parent License Study Denial	0	0
Removal of Child from Pre-Adoptive Home	Count of Appellant / Reasons of Adoptive Parent Removal of Child	0	1
Alleged Perpetrator Listing	Count of Appellant / Reasons of Alleged Perpetrator	0	0
Case Closing	Count of Appellant / Reasons of Case Closing	5	2
Denial of Childcare Services	Count of Appellant / Reasons of Denial of Child Care Services	0	0
Adoption Subsidy	Count of Appellant / Reasons of Denial of Adoption Subsidy	3	1
Foster Care Review Goal Determination	Count of Appellant / Reasons of Foster Care Review Goal Determination	6	1
Failure by Department to Follow Regulations	Count of Appellant / Reasons of Failure by Dept to Follow Regulations	0	0
Denial of Foster Parent License Study	Count of Appellant / Reasons of Foster Parent License Study Denial	13	7
Closing of Foster Home	Count of Appellant / Reasons of Closing of Foster Home	0	1
Removal of Child from Foster Parent	Count of Appellant / Reasons of Foster Parent Removal of Child	10	10
Interstate Compact Case	Count of Appellant / Reasons of Interstate Compact	0	0
Reduction of Services	Count of Appellant / Reasons of Reduction of Services	0	1
Appeal of Sliding Fee	Count of Appellant / Reasons of Appeal of Sliding Fee	0	0
Case Closing Young Adult	Count of Appellant / Reasons of Case Closing Young Adult	11	12
License Revocation	Count of Appellant / Reasons of License Revocation	9	5

**(b) the number of days between the hearing request and the first day of the hearing**

The attached FY2018 Fair Hearing Docket July 1, 2017 to December 1, 2017 “timeliness related data” provides both the number of days between the Fair Hearing request and the first scheduled hearing (Column I, “#Days FH Req-1<sup>st</sup> Date Sch”) and the number of days between the hearing request and the date of the actual first hearing (column J, “#Days FH Req-1<sup>st</sup> Hear Date”). FY 2017 data has been provided for comparison.

Table 3 provides a summary view of this data requested in statute.

**Table 3: Number of Days between Fair Hearing Request and Fair Hearing  
(FY18 to date, 7/1/2017 – 12/1/2017)**

	<b>Average Number of Business Days FY17 (7/1/16 to 12/6/16)</b>	<b>Average Number of Business Days FY 18 (7/1/17 to 12/1/17)</b>	<b>Business Days Allowed under Regulations</b>
number of days between the Fair Hearing request and the first <i>scheduled</i> hearing	54	43	65*
number of days between the Fair Hearing request and the date of the <i>actual</i> first hearing	55	45	

\* While a hearing is required to be scheduled within 65 business days, DCF regulations allow for continuances from Appellant, Fair Hearing Officer and/or Area Office which could increase a case’s timeline.

Currently in FY2018, the Department averages 43 business days for a Fair Hearing to be scheduled, and 45 business days for a hearing to take place once an appeal is filed. Department regulations stipulate that hearings should be scheduled within 65 business days of receipt of the request for hearing. The scheduling of fair hearings in a timely manner has steadily improved over the past several years, and continues to be timely. On average, the unit is scheduling hearings 20 days earlier than what is mandated under the regulatory timeframes.

**(c) the number of days between the first day of the hearing and the hearing officer's decision and**

**(d) the number of days between the hearing officer's decision and the agency's final decision;**

The attached FY2018 Fair Hearing Docket July 1, 2017 to December 1, 2017 “timeliness related data” provides both the number of days between the first day of the hearing (Column O, “#Days 1st Hear FH Off Dec”) and the hearing officer's decision and the number of days between the hearing officer's decision and the agency's final decision (Column Q, “#Days FHO Dec to Final

Dec”). It also provides the cumulative total of time between first day of the hearing and the agency’s final decision (Column P, #Days 1st Hear Final Dec).

In many FY18 cases, a decision is not yet due and has not been submitted. Of the cases where decisions have been made, the attached docket reflects that, on average, the decision is submitted within 30 days (Column O). Of the cases where a final decision has been issued, the decision issued within 12 days of the hearing officer submitting the decision for review (Column Q).

Closing out cases that predate FY2018 filings continues to be the priority work of the unit, along with working on the overall timeliness as it relates to the submission of hearing decisions. This year the Unit adjusted the scheduling of hearings for hearing officers, to allow for more sustained writing time so that decisions are submitted for review within the regulatory timeframe. In addition, emphasis continues to be placed on the performance review system for each individual employee, to ensure that expectations relative to the submission of hearings are met consistently. Finally, a new supervisory structure for the hearing officers will be implemented in the third quarter of FY18, which is discussed in greater detail below.

- (e) the number of days of continuance granted at the appellant's request;**
- (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request;**

The attached FY2018 Fair Hearing Docket July 1, 2017 to December 1, 2017 “timeliness related data” provides the number of days of continuances granted for each request as required in the statute.

- the appellant's request (Column L, “#Days Cont at Appell Req”);
- the number of days of continuance granted at the request of the Department of Children and Families (Column N, “#Days Cont at Area Req”); and
- the number of days of continuance granted at the request of the hearing officer (Column M, “#Days Cont at FH Off Req”).

Table 4 below provides a summary of the continuances granted on Fair Hearings that were requested thus far in FY 2018 based on who requested the continuances.



**Table 4: Number of Continuances Granted (FY18 to date, 7/1/2017 –12/1/2017)**

	<b>Number of Continuances Granted in FY2018</b>	<b>Average Length of Continuance (business days)</b>
Days Granted at Appellant’s Request	49	38
Days Granted at Fair Hearing Officer’s Request	4	17
Days Granted at Area Office’s Request	4	22
<b>Total continuances granted</b>	<b>57</b>	

In general, when a continuance is allowed the matter is then scheduled on the next available date. Currently, due to the logistics regarding available hearing space in each area office, the next available date may often be 60 to 90 calendar days later.

**(g) whether the departmental decision that was the subject of the appeal was affirmed or reversed;**

The cases filed in FY18 are just coming due, because upon filing, the matter is scheduled within 65 business days (approximately 94 calendar days), and then upon the record closing after hearing, the hearing officer has 60 business days (another 90 calendar days) to write the decision. Therefore one case from FY 2018 has issued, and it upheld the underlying decision made by the Area Office. Many more decisions from CY18 have issued (those appeals filed earlier in 2017). Thus far, of the cases filed in CY 18, 72 have issued. Of those, 16 reversed the underlying decision made by the Area Office and 56 affirmed the underlying department decision.<sup>3</sup>

It is also important to note that some of the decisions which are appealed are resolved prior to hearing, and therefore are not listed as affirmed or reversed. Therefore, the attached FY2018 Fair Hearing Docket July 1, 2017 to December 1, 2017 “decision related data” provides data on cases that are resolved prior to a Fair Hearing taking place (column B, “Reas for Dismiss(Prior to Hear)”) as well as after a Fair Hearing has occurred (columns C through L).

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<sup>3</sup> Data as of December 14, 2017

Table 5 below summarizes that 179 Fair Hearings were resolved before a hearing took place.

**Table 5: Pre-Hearing Outcomes as of 12/1/2017 for Fair Hearings Requested (FY18 to date, 7/1/2017 – 12/1/2017)**

Settled Cases where the underlying decision on appeal is overturned prior to hearing, after an administrative review by an area office manager	23
Withdrawal Withdrawn by the Appellant as documented in the Fair Hearing file via a written request by the Appellant	14
Closed for Other Reason Including but not limited to appellant failed to appear at the hearing, Fair Hearing request as filed was not a proper subject for appeal and therefore was dismissed at the outset, or that the Fair Hearing request as filed was well beyond the regulatory 30 day timeframe in which to file an appeal and therefore was dismissed	142
<b>Total resolved prior to hearing</b>	<b>179</b>

**(ii) the fair hearing requests filed prior to fiscal year 2018, which are pending for more than 180 days, stating the number of such cases, how many of such cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision.**

Resolving cases open for more than 180 days continues to be a high priority for the Department. As stated in previous reports, in November, 2015 the Department made the commitment to provide temporary staff to the fair hearing unit to assist in eradicating the significant backlog that existed at that time. There were cases yet to be decided which dated back 13 years, to 2002. Four temporary paralegals, a temporary administrative staff person and two part time temporary supervisors were hired to assist in writing outstanding decisions and to finalize cases awaiting supervisory review. From December 2015 through November 2017 a total of 4933 cases were closed; all cases through CY2015 with the exception of cases involving a DA stay are now closed. The temporary paralegals and administrative staff person ended their assignments with the unit on June 30, 2017.

As of November 30, 2017, there were 1072 Fair Hearing requests filed prior to FY18 which are pending for more than 180 days without a final agency decision. The table below details the status of the requests.

**Table 6: Status of Fair Hearing requests filed prior to FY18 pending for more than 180 days without a final agency decision**

Decided by hearing officer, pending supervisory review	577 <sup>4</sup>
Decided, drafted by temporary staff but not entered into ifamily net system OR heard but not written	340 <sup>5</sup>
Current DA stay, DA stay recently expired and matter is scheduled or scheduled and heard, but not finalized	58 <sup>6</sup>
Heard but decision is not due	51
Not heard, decision is not yet due	20

Based on our experience working to significantly decrease the backlog the past two years, the department has added two additional full-time supervisory positions to the unit, doubling the total number of supervisors to four. Once fully trained, in the third quarter of FY2018, the supervisors will be assigned to oversee 3-4 hearing officers, providing increased oversight to those they supervise as well as more a focused review of hearing decisions. It is anticipated with this increase in supervisory capacity, more decisions will be reviewed and finalized each month. Charts below provide a visual guide relative to the progress made on the backlog.

The chart below reflects the caseload volume for the past 5 years. Once staffing increases occurred in November, 2015 the work of the unit was focused on decreasing the backlog of cases. In calendar years 2016 and 2017, with the use of temporary staff as well as an increase in permanent staffing levels, the Unit has been continued to close out more cases than are filed on an annual basis. In CY 2016, 1984 cases were filed and 2837 cases were closed. In CY 2017 (through November 30, 2017) 1486 cases were filed and 1829 were closed. With the twofold increase in supervisors to review decisions, it is anticipated that this positive trajectory will continue.

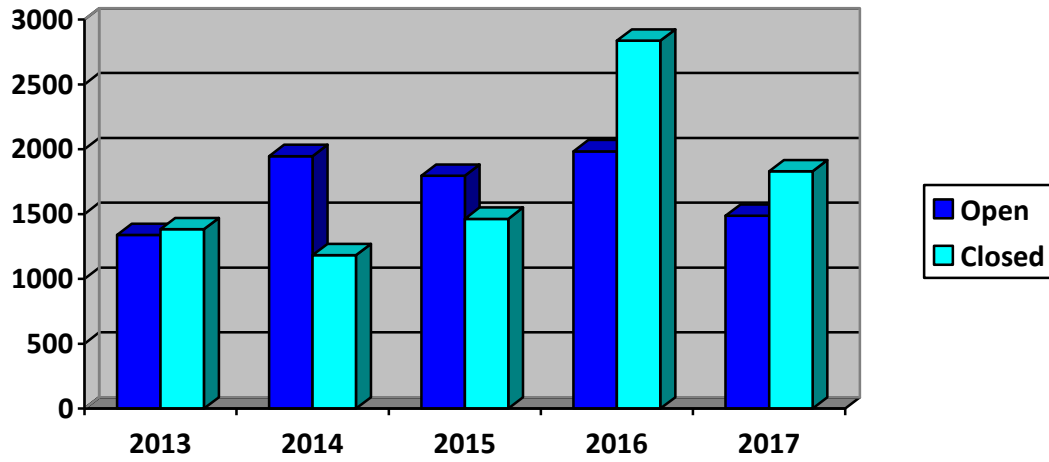
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<sup>4</sup> A manual count was conducted on December 20, 2017 of the files submitted by hearing officers which are pending review.

<sup>5</sup> Relative to the cases filed prior to FY18 pending for more than 180 days have been heard but not decided by the hearing officer, the temporary staff who assisted in writing some of those decisions did not have the ability to enter those decisions into the workflow, and therefore an exact number cannot be obtained from the Department’s database.

<sup>6</sup> A “DA stay” occurs when there is a criminal investigation or criminal charges are pending regarding the allegation on appeal; the District Attorney may request a stay of the fair hearings (pursuant to 110 CMR 10.10).

**Chart 1: Fair Hearing Cases Opened and Closed (CY13-CY17)**



**Attached:**

- Attachment 1: FY2018 Fair Hearing Docket (July 1, 2017 to December 1, 2017)<sup>7</sup>

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<sup>7</sup> Note that due to July 1, 2017 occurring on a Saturday, the data begins on July 3, 2017, the next business day.