

JUVENILE COURT DEPARTMENT GUIDELINES FOR COURT INVESTIGATIONS AND REPORTS

Effective: March 9, 2020

I. THE ROLE OF THE COURT INVESTIGATOR

The court investigator holds a position of public trust and confidence and, as such, court investigators shall conduct themselves in a professional manner and refrain from any conduct which may result in a breach of such trust and confidence. In a care and protection proceeding, a judge must have as much relevant information as possible. One important source of information is the court investigator's report ("Report"), because it provides the court with needed information that may not otherwise be presented by the parties. *See Custody of Tracy*, 31 Mass. App. Ct. 481, 485 (1991).

Given how important the Report is to the care and protection proceeding, the court investigator needs to have the ability to develop investigative information and write a report that displays excellent communications skills, solid analytical ability, and the aptitude to exercise sound independent judgment. Supplied with this information, a judge is better able to undertake the challenging task of deciding the outcome of a care and protection case.

II. THE PURPOSE AND USE OF THE REPORT

By statute, the court investigator is required to "investigate the conditions affecting the child¹ and to make a [R]eport under oath to the court." G. L. c. 119, § 24. The Report will assist the court to determine the case management plan, with a focus on achieving timely permanency for the child, and to decide the outcome of the case in a fair and prompt manner.

The Report should contain all the facts obtained as a result of the investigation. *See* G. L. c. 119, § 21A. Additionally, the Report should be limited to the factual information collected from identified sources. *See Custody of Tracy*, 31 Mass. App. Ct. at 484. The Report may contain hearsay that is admissible in evidence. *See Section V. I. Hearsay*. To ensure admissibility, the court investigator must clearly identify the source (person, document, etc.) of any information contained therein by name. *See Duro v. Duro*, 392 Mass. 574, 579-580 (1984); *Custody of Two Minors*, 19 Mass. App. Ct. 552, 559 (1985).

¹The term "child" is used throughout the document in lieu of "children" for ease of reading and convenience. However, if more than one child is on the petition, then the investigation and the investigation report must cover all the children on the petition.

Once submitted to the court, the Report is available for inspection by all counsel and is subject to motions in limine (a motion filed by a party that questions the admissibility of certain information). Due to the importance of the Report, these guidelines were created to assist the court investigator with his/her statutory task.

The purpose of the guidelines is to:

- suggest sources the court investigator should use to obtain the facts to be included in the Report
- recommend how to best organize the contents of the Report
- address basic elements that all Reports must contain
- discuss the use of hearsay in the Report
- discuss the propriety of addenda to the Report
- address the “Summary” and/or “Recommendation” sections of the Report

III. CONFIDENTIALITY

Children, youth and families involved in care and protection proceedings have an expectation of, need for, and right to privacy. This interest is protected by laws, regulations and rules of professional responsibilities that limit the disclosure of information. Protecting the confidentiality of information belonging to children, youth and families is not only a legal and ethical obligation, but also is essential to establishing trust and building relationships among families and the systems that work with them. The disclosure of confidential information carries the potential of significant consequences, some unintended and harmful. For these reasons, court investigators must understand that information gathered during the investigation is confidential.

Confidential information must only be disclosed or used in a manner that is consistent with applicable laws. By statute, the investigator is required to make a report to the court and may be called to testify. The investigator may not otherwise share confidential information.

IV. THE INVESTIGATION

A. SOURCES OF INFORMATION

The Report is expected to contain information obtained during the investigation from interviews with the parties and key collateral sources and from a review of relevant documents and records. *See section V. B.* for specific information to be gathered and reported.

1. Petitioner and Petitioner’s Records

The investigation should include:

- the petitioner’s reason for filing the care and protection petition
- the petitioner’s history and involvement with the family
- the petitioner’s current situation and relationship with the parents

If the Department of Children and Families is the petitioner, its entire case file must be reviewed, including:

- the electronically-generated case file
- the on-going social worker's binder
- G. L. c. 119, §§ 51A reports and 51B investigations
- action plans
- case reviews, including any foster care reviews
- voluntary agreements or contracts, and the
- day-to-day dictation of the social worker

2. Parents

See section V. B. 4, 9, 10, 11 The Outline of the Report, for specific information that should be obtained regarding the parents, either by interview or review of documentary sources.

3. Child on the Petition

See section V. B. 5. for specific information that should be obtained regarding the child, either by interview or review of documentary sources.

4. Information from other sources

The court investigator should seek information from a variety of sources including those suggested by mother, father, child, other family members, service providers and the petitioner. Additional sources of information may include, but are not limited to:

- All key collaterals including hospitals, physicians, dentists, mental health, substance abuse, domestic violence and other treatment providers, parent aides, teachers, day care workers, early intervention specialists, police, relatives, neighbors
- The probation officer assigned to the care and protection case
- Extended family members and any other child, if age appropriate, of the parents who are not included in the petition
- Other caretakers and proposed caretakers

5. Documentary Sources

Documentary sources or records may include, but are not limited to:

- Court Activity Record Information (CARI)
- Special education evaluations
- Home assessments
- Medical/Health records
- School record
- Probate and Family Court records; other court records

The court, upon the filing of a petition, should automatically order the each parents' CARI. The court may order CARI for any other individuals relevant to the petition. The court may order criminal records from other states if it is deemed necessary and appropriate. The court investigator may review the CARI in the clerk magistrate's office or the probation office, depending on local practice. A copy of the CARI should **not** be attached to the Report. However, the information contained in the CARI should be included in the narrative of the Report.

6. Privileged and/or Confidential Information

The court investigator's appointment form is issued by the court and grants the court investigator access to both statutorily privileged and otherwise restricted information. Some privileged record holders may require a separate release of the information by the holder of the privilege or a specific order issued by the court prior to releasing such information. The court investigator may ask the holder of the privilege to sign a release or may file a motion, with notice to the attorneys and pro se litigants, requesting a court order for access to the records.

B. PARENTS SHOULD BE INTERVIEWED, AND A HOME VISIT SHOULD BE CONDUCTED

Parents must be interviewed and a home visit conducted. This is especially important if the parents are seeking physical custody of their child. Parents must be interviewed separately.

1. Purpose of the Interview

The purpose of the interview is to gather factual information regarding the family's circumstances and to offer the parents an opportunity to provide information that they would like the court to know about themselves and their child.

2. Preparing for the Interview

Prior to meeting with the parents, the court investigator should conduct basic background research including obtaining information about the reasons the petition was filed (*e.g.* read the affidavit, 51A and B reports, police reports, prior court investigation reports, etc.).

3. Unannounced visits

Unannounced visits should be avoided unless the condition of the home or its occupants are an issue.

4. Scheduling the Interview

The court investigator is required to contact the parent's attorney, informing him/her of the date and time the court investigator would like to meet with his/her client; the court investigator should give the attorney a reasonable opportunity to be present, but not let the attorney's schedule control the investigation. The court investigator is required to notify the attorney that if the attorney does not respond to the court investigator within three days of contact, the court investigator will initiate contact with the parent. An attorney cannot prevent the court investigator from performing his or her job. However, an attorney may advise a client not to meet with the court investigator or answer a particular question. If a parent's attorney informs the court investigator that the court investigator may not meet with the attorney's client, the court investigator shall inform the attorney that: (1) the court may draw a negative inference from the client's failure to meet with the court investigator, and (2) the Report will include the fact of the client's failure to meet with the court investigator and the reason for that failure. Thereafter, the court investigator shall not meet with the parent and shall include the details of such restrictions in the Report.

5. The Use of Interpreter Services

A court investigator seeking to interview a parent who has difficulty communicating and understanding English, or a parent who is deaf, must obtain the services of a court-approved interpreter for the interview. It is not necessary to file a motion for funds or for the services of a court interpreter. A court investigator may arrange for the assistance of a court interpreter by faxing a completed Court Investigator Request form to the Office of Court Interpreter Services (OCIS) at 617-367-9293 or email it as an attachment to languageaccess@jud.state.ma.us. *See Appendix C. Request for Interpreter Form.* The interpreter will bill the OCIS directly for payment upon completion of the assignment. Due to the high demand for court interpreter services in court, it is important that the court investigator schedule the interview with the party for after 3:00 p.m. and during normal business hours.

If it is later determined that the services of an interpreter are not needed, the court investigator shall contact the OCIS by telephone (800-572-5027 x 0343) or by email at languageaccess@jud.state.ma.us to cancel the service. Thereafter fax the O.C.I.S. Service Request Cancellation form to (617-367-9293). *See Appendix D. O.C.I.S. Service Request Cancellation.*

6. The Interview of the Parents

The court investigator must interview each parent separately and conduct a home visit. This is particularly important if the parent wishes to have physical custody of his/her child. Each interview should be conducted with respect and openness so that the court investigator may hear their versions of the events and circumstances regardless of the allegations.

Specific areas of inquiry include but are not limited to:

- parent's understanding of reasons the care and protection petition was filed and

- the parent's responses to the allegations
- parent's understanding of each child's personality and needs, what parent wishes for the child and how parent would like to see child's situation change
- the background and history of each parent as an individual, as a couple, as parents
- whether either parent or both parents are of Native American ancestry or eligible for membership in an Indian Tribe. If yes, ask the name of the tribe or tribes and the parent's connection with the tribe. For example, whether the parent lived on the reservation
- whether parentage has been established, whether the child was born out of wedlock and/or whether both parents names are listed on the child's birth certificate
- whether there is anything not already discussed that the parent would like the court to know

See section V. B. 4, 9, 10, 11 for other potential areas of inquiry depending on relevance.

C. A CHILD WHO IS THE SUBJECT OF THE PETITION MUST BE INTERVIEWED (IF AGE APPROPRIATE) AND A HOME OR PLACEMENT VISIT MUST BE CONDUCTED

The child who is the subject of the petition must be interviewed. The interview may be subject to some limitations given the circumstances and ages of the child. A home or placement visit must be conducted for all the children who are subjects of the petition.

1. Scheduling the Interview

The court investigator is required to contact the child's attorney, to inform the attorney of the date and time that the court investigator would like to meet and interview the child and conduct a home or placement visit. The court investigator should give the attorney a reasonable opportunity to be present, but should not let the attorney's schedule control the investigation. An attorney may not prevent the court investigator from meeting with the child who is the subject of the petition.

2. The Interview of the Child

When interviewing a child, the focus should be on age, developmental level, physical and other disabilities, if any. Open-ended questions should be used when interviewing the child. For example: What would you like the judge to know about you? Not: "Do you want to live with your mother or your aunt?"

Depending on the age of the child, specific areas of inquiry include but are not limited to:

- his/her understanding of why the family is involved with the court
- why he/she is in placement; where he/she wants to reside and with whom in

- the short and long-term mental health and developmental concerns and, for an older child, the use of substances
- a review of current functioning: school performance, peer relationships, interests, wishes, and ambitions.

D. A LAMB-TYPE WARNING SHOULD BE GIVEN BEFORE INTERVIEWING A PARTY

1. The *Lamb*-type Warning

The court investigator must explain to the party the role of the court investigator and the purpose of the interview. The *Lamb* warning involves explaining to the party the fact that information the party gives to the court investigator is not confidential and will be shared with the court. There cannot be any “off the record” discussion prior to interviewing a party. *See Commonwealth v. Lamb*, 1 Mass. App. Ct. 530 (1973). A similar disclosure should be made to a mature child and appropriately modified to reflect the child’s age and level of understanding.

2. Verify the Party’s Understanding of the Warning

To verify that the party understands, the court investigator should ask the party to summarize his/her understanding of the warning.

3. Advise the Party to be Truthful

The court investigator should instruct the party that they must be truthful, that they may have an attorney present, and that they may refuse to answer any question. However, the court investigator must inform the party that any refusal to answer questions may be included in the Report.

4. Include a Reference to the *Lamb*-type Warning in the Report

The court investigator should indicate in the Report that the *Lamb*-type warning was given and whether the party indicated his or her understanding of the warning, or alternatively whether the court investigator believes the warning was understood.

E. OTHER KEY INFORMATION TO BE OBTAINED DURING THE INVESTIGATION AND INCLUDED IN THE REPORT

1. Efforts Made to Contact/Locate an Absent Parent

The court investigator should make reasonable attempts to contact/locate an absent parent. All efforts should be included in the Report with specificity.

Example: “Father’s whereabouts are unknown and the court investigator made the following unsuccessful attempts to contact/locate him: called xxx-xxx-xxxx on [date]

at [time] and left a voice message.”

2. Information about a Minor Child Who Is Not Included on the Petition

If a minor child who is not included on the petition is in the custody of the parents, the court investigator should see the child and interview him/her. If a child is not in the custody of the parents, a statement should be included indicating where the child is placed, with whom, and why the child is not in the parents’ custody. If any child is in the custody of DCF, the name and address of each child’s foster parents should be omitted from the Report. A foster parent may be referenced by role, ex. “Foster parent said . . .”

3. Safety Concerns

If the court investigator becomes aware of anything that raises concerns about the safety of the child, especially evidence of domestic violence, sexual abuse, sexual exploitation or untreated mental health issues/illness, the court investigator shall bring the information to the court's attention **immediately** and thereafter shall include it in the Report. *See section H* regarding the inclusion of certain information in the Report.

4. Information From and about Extended Family Members

Extended family members who know the child, have provided care for the child, or who may have information relative to the case, should be contacted for background history. The court investigator may ask the parent about extended family members through the use of open-ended questions. After obtaining information regarding such family members, the court investigator should, as a courtesy, disclose to the parent that he/she will be contacting the family members and those who have provided care for the child. The court investigator may ask the parent whether there is any information that he/she would like to disclose regarding any family members (e.g. any potential biases).

5. Prior Care and Protection Proceedings

The court investigator should conduct an inquiry into the existence of any previous care and protection proceedings involving the same child. If there are any such proceedings, relevant information should be included in the Report.

6. Discrepancies or Omissions

The court investigator should identify any discrepancies or omissions that arise during the investigation and include them in the Report. Information subsequently obtained to resolve those discrepancies should also be included in the Report.

Example #1: Action plan has not been developed or is out of date; the parents may not have seen the action plan; action plan is missing information;

Example #2: Social worker may or may not have seen the child or family for some

time -**verify** this with DCF social worker; note any explanations.

V. **THE REPORT**

A. **IN GENERAL**

When writing the Report, the following conventions should be used:

- Make use of bold type and underlining and/or headings to identify sources
- Number the pages
- Provide specific dates or time frames if possible
- Avoid use of “on 1 or 2 occasions.” Use specific dates whenever they are known
- Avoid use of “in the past.” Be specific
- Identify sources of statements
- Include dates for **all** events, including but not limited to, **all** interviews, home visits, and visitation between parents and child
- Define all medical/psychiatric terms using a medical dictionary or a current edition of the Diagnostic and Statistical Manual of Mental Disorders

B. **THE OUTLINE OF THE REPORT**

The following is a suggested outline for the Report. This outline is offered to help the court investigator present the information in an orderly, complete, and easily accessible manner. The outline also provides the court investigator with the kinds and quantity of information to be contained in the Report. The data should be presented in the order that makes the most sense logically for a particular case. The court investigator should state the facts with respect to each category of information and refrain from using evaluative terms. The outline is not exhaustive as the facts of each case are unique and may require the review of additional factors or sections. Further, this outline may identify issues that are not relevant to a particular case being investigated. If a section of the outline is not germane to a particular case, it should not be included in the Report.

1. **Case Caption**

- Case Name
- Docket Number
- County
- Division

2. **Parties**

- Names
- Addresses of the parties, including the child, unless in foster care, and any putative father(s)
- Dates of birth

If there are multiple children who have different mothers and fathers, putative or otherwise, identify which children relate to which parents.

3. Statement of current allegations from 51A and 51B reports, DCF affidavit and DCF court reports, if any

Actual reports and affidavits may not be copied and pasted into the Report.

4. Parents' background and history

- Marital status including history of present and past marriages; dates of divorce
- Relationship with spouse/partner
- Education history
- Employment history
- Source of any income or financial assistance
- Religion, if known
- Cultural considerations including Native American heritage issues
- Physical status - ailments; substance use disorder
- Psychological status - mental health (including diagnosis, treatment, medication history)
- Impulse control and response to stress
- Relationship with extended family
- Relationship with supports
- Relationship with an individual child (note any paternity issues)
- Prior history, if any, with any state or private social service agency, court, police including, but not limited to:
 - i. Chronological history of G. L. c. 119, § 51As and 51Bs – when, where, filed by whom, investigated by whom, allegation(s), whether substantiated/unsubstantiated, recommendation
 - ii. Chronological history of any G. L. c. 209A or c. 258E actions, temporary restraining orders, violations of 209A or 258E orders
 - iii. Court proceedings, including prior C&P and Termination of Parental Rights (TPR) cases and outcomes
 - iv. Criminal record, including records of other states, if available
- Each parent's view of C&P allegation(s)
- Each parent's view of the child's character and needs
- Action plan tasks, details and compliance/non-compliance with each task relative to each parent)

5. Each child on the petition

- School and grade
 - i. Attendance
 - ii. Appearance

- iii. Behavior
 - iv. Grades
 - v. Relationships in school
 - vi. Early intervention, special education (I.E.P or other accommodations) and other evaluations
 - viii. IQ, if available
- Foster care
 - i. Duration
 - ii. Behavior
 - iii. Attitude
 - iv. Verbal and behavioral reaction before and after visitation with parents and/or siblings
 - v. Relationship with and attitude/behavior toward foster parent(s) and other adults in the foster home
 - vi. Relationship with and attitude/behavior toward any other child in the foster home
 - vii. Nature, level and quality of communication with parents
- Nature of alleged parental abuse/neglect
 - i. Sexual abuse
 - ii. Physical abuse and/or neglect
 - iii. Emotional abuse and/or neglect
 - iv. Educational neglect
 - v. Lack of supervision; placing child in high-risk situations
 - vi. Abandonment
 - vii. Unsanitary/unsafe living conditions in the family home
- Effect of abusive or neglectful treatment on the child
 - i. Impact on educational status, if any
 - ii. Social/Emotional/Psychological/Behavioral status
 - iii. Physical health
- Relationship with parents including step-parents or extended family members
 - i. Nature of relationship prior to removal
 - ii. Nature and quality of visitation or other contact with parents and/or step-parents
 - iii. Nature and quality of visitation or other contact with extended family members
- Relationship with siblings
 - i. Nature of relationship (before and after removal)

Time spent living together—type, extent, and quality of relationship
If not in same placement, type, extent, and quality of visitation if applicable;
note any court orders regarding sibling visitation

- ii. Siblings' expressed desire to live together
- iii. Siblings' expressed desire for visitation if living together is not feasible
- iv. Child's preference for placement

- Child's view of family, self and situation (if age appropriate)
- Child's feelings about:
 - i. Parents
 - ii. Extended family, if appropriate
 - iii. Reunification
 - iv. Adoption, guardianship, other possible permanent plan
- Action plan tasks, details and compliance/non-compliance with each task, relative to each child

6. Other caretakers, if applicable, including proposed caretaker(s)

- Name(s) (To protect substitute caretakers not known to parents, use first initial of last name only. Ex. Ms. M)
- Address(es) (To protect substitute caretakers not known to parents, addresses may be excluded.)
- Date(s) of birth
- Time spent living with the child in present care and protection case
- Marital status including history or present and past marriages; dates of divorce/separation
- Relationship with spouse/partner
- Last grade of education
- Employment history
- Source and amount of any income or financial assistance
- Religion, if known, and religious considerations, if any
- Cultural considerations
- Physical status - ailments; substance use disorder
- Psychological status; mental health
- Impulse control & response to stress
- Relationship with extended family
- Relationship with supports
- Relationship with their children, if any, and the child on the petition
- Prior history, if any, with any state or private social service agency, court, police including, but not limited to:
 - i. Chronological history of G. L. c. 119, § 51As – when, where, by whom, allegation, whether substantiated/unsubstantiated, recommendation
 - ii. Chronological history of any G. L. c. 209A or 258E actions, temporary restraining orders, violations of 209A or 258E orders

- iii. Court proceedings
- iv. Criminal record, including records of other states, if available

- Caretaker'(s) view of allegation(s) in the care and protection petition
- Caretaker'(s) view of the child's character and needs
- Caretaker's ability to advocate for and participate in any services provided to the child in their care

7. Any Minor Child of the respondent mother and father not included in the petition.

- Background
 - i. Name
 - ii. Present address, unless in foster care
 - iii. Age and date of birth
 - iv. Mother
 - v. Father (note any paternity issues)
- School and grade
 - i. Attendance
 - ii. Appearance
 - iii. Behavior
 - iv. Grades
 - v. Relationships in school
 - vi. Special education needs, if any
 - vii. IQ, if available
- Special needs
- Medical needs
- Psychological needs
- Prescribed medication
- Other court proceedings
- With whom the child is living. If not with parents, why not?
- Explain why the child is not included on the petition.

8. Extended Family Information

- Maternal/paternal grandparents, if living
 - i. Name(s)
 - ii. Address(es)
 - iii. Information or knowledge about the allegations in the petition, and care of the child
 - iv. Interest in helping family, including financially
 - v. Willingness and capacity to care for the child

- Maternal/paternal aunts and uncles (*See* factors (i) - (v) above relative to grandparents)
- Adult siblings (*See* factors (i) - (v) above relative to grandparents)

9. Parenting Skill and Abilities (How the parent provides for the child)

- Child's nutrition
- Child's clothing (cleanliness and appropriateness for time of year)
- Family Housing (describe setting)
- Education of the child
 - i. Parental involvement and interest in school/daycare
 - ii. Parent's explanation for any school related problems
 - iii. Level of parental understanding and support for child's educational needs
- Medical/Physical/Psychological Welfare of Child – parents' ability to provide for:
 - i. Medical/psychological care
 - ii. Emotional care
 - iii. Physical care
 - iv. Level of parental understanding and support for child's medical, psychological, emotional, or physical needs
- Cultural considerations
- Religious considerations
- Visitation and communication with the child
 - i. Attendance at visits, if problems, describe in detail (including date(s))
 - ii. Interaction with the child – describe in detail (including date(s))
 - iii. Affection/attention
 - iv. Ability to set appropriate limits
 - v. Ability to communicate with children
 - vi. Ability to communicate with visitation supervisors
 - vii. Ability to appropriately stimulate the child
 - viii. Ability to feed the child
 - ix. Ability to assist the child in toileting
- If court investigator observed visit(s) between parent and child:
 - i. When, where, arranged by whom
 - ii. Parent and child present
 - iii. Describe visit, especially parent/child interactions in detail

10. Parental Involvement with DCF

- Level of cooperation
- Position regarding action plan
- Motivation to utilize services
- Capacity to utilize services
- Previous experiences with other children
- Willingness and ability to modify behavior that led to filing of care and protection petition

11. Parental Compliance with, Attitude toward, and Benefit(s) from Recommended Treatment Programs and Evaluation

- Psychotherapy
- Drug/Alcohol Evaluation/Counseling
- Domestic Violence Counseling/Intimate Partner Abuse Education Program
- Homemaker/Home Health Aide
- Parenting Program
- Cooperation with any court-ordered evaluation, including Court Clinic evaluation, parenting evaluation, substance use disorder evaluation, etc.

C. THE REPORT SHALL BE THOROUGH, PROFESSIONAL, AND CONTAIN ACCURATE INFORMATION

Specifically, the Report should:

- provide current information and relevant history rather than merely relying upon, incorporating, photo copying, scanning or copying and pasting prior existing reports
- reflect a balanced picture of the family, listing all positive and negative information relevant to the case
- utilize all available relevant sources. The importance of contacting all known collaterals cannot be overemphasized
- be as factual as possible. Primary source information is preferable to secondary source information. Opinions and conclusions of the court investigator should be limited to the summary and recommendation sections of the Report

Example: If the Department of Children and Families (DCF) social worker informs the court investigator that a physician provided information to the worker, the court investigator not only should include the DCF worker's statement, but should also contact the physician to verify the information from its primary source. This verification should be mentioned in the Report.

- explain and discuss medical, psychiatric, and social conditions in language understandable to the average layperson
- state the child's needs in detail

- have a professional appearance. It should not contain spelling or grammatical errors and the Report should be paginated

D. THE REPORT SHOULD NOT BE BIASED

When writing the Report, the court investigator should give a balanced presentation that includes parents' strengths and weaknesses. It should also include any relevant information that is factual, but which may not support the court investigator's conclusions. Specifically:

- Avoid describing the family in derogatory or judgmental terms
- Avoid incorporating statements from sources that contain negative data in judgmental terms
- Exclude biases of any of the parties toward DCF as a whole or toward any specific area office or social worker. The purpose of the investigation is to provide the court with information pertaining to the specific child and family before the court. Positive and negative interactions between any of the parties and DCF may be included if relevant as well as any of the facts regarding actions or inactions of DCF
- Seek out sources who may have differing viewpoints
- Consult any sources offered by the parents

E. REPORTED INFORMATION SHOULD BE DESCRIPTIVE NOT EVALUATIVE

The information contained in the Report should be descriptive (an observation or statement that contains no judgment), and not evaluative (an observation or statement that reflects an attitude or opinion). If a source's comment is evaluative rather than descriptive, attempt to clarify the statement or have the source be more specific. Reports (in contrast to guardian ad litem reports) are factual and not evaluative in nature. Nevertheless, a court investigator may include statements of opinion as long as the source of the opinion is identified.

Example #1: An improper evaluative statement would be "The apartment was filthy."

A proper descriptive statement would be "The kitchen sink was filled with dishes covered with dried food and there were dozens of flies and roaches in the apartment."

Example #2: An improper evaluative statement would be "Father is a well-known drunk."

A proper descriptive statement from an identified source would be "I saw father yesterday on the street; he was unable to stand and was slurring his words."

F. SOURCES SHOULD BE EASILY IDENTIFIABLE

The Report should clearly show the following for each factual allegation:

- who the source of the information is or the type of record reviewed
- what the source's position is and the source's relationship is to the family
- when the information was obtained or person interviewed (specific dates)
- how the information was obtained
- why the source is important
- proper attribution, i.e., "Nurse Ruth Smith, the child's nurse at Children's Hospital on June 6, 2011, said that..." rather than "Hospital staff said that . . ."

G. FACTS SHOULD BE SEPARATED FROM CONCLUSIONS AND OTHER PERSONAL VIEWS HELD BY THE COURT INVESTIGATOR

Only the facts should be contained in the body of the Report. Expert witness or professional opinion information, if any, should be included in separate paragraphs within the body of the investigation so that such information and the identity of the person who provided it are clear. The court investigator's opinions, if any, should be confined to the summary and recommendations sections of the Report. **The Report should never include conclusory statements as to whether DCF (or other petitioner) has met its burden.**

H. INFORMATION THAT COULD POSE RISKS TO A PARENT OR CHILD

Certain information may arise during the course of the investigation, which if included in the Report, could pose safety risks or dangers to a parent or the child involved in a case, especially if there is evidence of domestic violence. However, it is important to bring that information to the attention of the court. In instances where the court investigator believes that including the information in the Report likely would be dangerous, the court investigator may request a hearing before the court to bring the matter to the attention of the judge and attorneys in the case.

I. HEARSAY

Hearsay is an out-of-court statement made by a person that is offered by another to prove the truth of the matter asserted. For example, anything that is reported to the court investigator by a source, which is then incorporated by the court investigator into the Report, is hearsay. Totem-pole hearsay is an out-of-court statement made by a declarant to another individual who then reports it to a third person who offers it in court for the truth of the matter asserted. One example of totem-pole hearsay would be a neighbor reporting to the court investigator that she overheard the child, who is the subject of the care and protection proceeding, say that her bruises came from a beating by her parent.

Generally, hearsay is not admissible as evidence in a court proceeding. However, there are certain exceptions. Hearsay, including totem-pole hearsay and hearsay from a child, is allowed in the Report in care and protection proceedings. The hearsay exception for Reports exists "because of the importance of providing needed information to the court." *Custody of Tracy*, 31 Mass. App. Ct. 481, 484 (1991). The admissibility of the Report also recognizes the difficulty and time constraints inherent in collecting adequate confidential information to be presented at the adjudicatory hearing. *Id.* Furthermore, it permits the judge to "steer as wide a course as possible" through all of the information presented regarding the fitness of parents.

Id. at 485.

The Report “should be limited to factual information collected from identified sources in order to permit a fair cross-examination of the court investigator as to all contributions to his/her Report.” See *Custody of Tracy*, 31 Mass. App. Ct. at 487. This provides the parties with an opportunity to adequately challenge any material in the investigation with evidence of his/her own or to call any contributor to the Report. *Care and Protection of Leo*, 38 Mass. App. Ct. 237, 243 (1995).

For hearsay contained in a Report to withstand a motion to strike, the parties must be afforded an opportunity to refute the court investigator and the court investigator’s sources through cross examination and other means. **Therefore, all out-of-court statements in the Report must be attributed to specific named sources by the court investigator in the Report.** Whether a hearsay statement in a Report will be allowed to stand or will be stricken is for the court to decide. The obligation of the court investigator is to include any such statement, if relevant, in the Report, and the identity of its source.

Under the law there is no distinction between levels of hearsay as to their inclusion in a Report. Therefore, court investigators should report totem-pole hearsay so long as there is an identified source capable of being cross-examined as to each level of the hearsay. *Custody of Michel*, 28 Mass. App. Ct. at 266. It is reasonable to assume that as a part of the investigation, a court investigator will talk to neighbors, teachers, social workers, mental health workers, relatives and friends, who will describe what they heard from other persons. *Id.* Such other persons, as well as the person interviewed, must be clearly identified, by name, as the source of the information provided to ensure admissibility. Although the inclusion of hearsay in a Report is expected and permitted, it is recommended that the court investigator seek to confirm any totem-pole hearsay information from the primary source of the information.

Pursuant to G. L. c. 119, § 24, a Report not only is admissible as evidence in a care and protection proceeding, despite the fact that it includes hearsay, but also “shall be a part of the [court] record.” (Note the mandatory language in § 24 and Juv. Ct. R. 14(C).) *Custody of Jennifer*, 25 Mass. App. Ct. 241, 245 (1988); *Custody of Michel*, 28 Mass. App. Ct. 260, 265 (1990); see also *Adoption of Astrid*, 45 Mass. App. Ct. 538, 546 further rev. den’d, 428 Mass. 1109, (1998) (no error in admitting Report in a proceeding to dispense with consent to adoption, including opinions, recommendations, and conclusions, where court investigator testified, her sources were identified and the parents had an opportunity to rebut any adverse or erroneous material). See also Mass. G. Evid. § 1115(c)(1) and note thereto.

J. SUMMARY SECTION

After the body of the Report is complete, the court investigator may include a section that summarizes key facts. Facts that do not appear in the body of the Report should not be in the summary section.

This section allows the court investigator to state the implications of all the data collected with regard to the petitioner's allegations and the possible case disposition. It is an opportunity to underline strengths and weaknesses of the family that may not be readily apparent. Furthermore, this section can speak to the willingness and ability of the parents to work on the issues that originally brought them to the attention of the court. The summary section should not be used as an opportunity for the court investigator to discuss whether the court investigator liked or disliked the family or agreed or disagreed with the family lifestyle. It should also not be used to express an opinion as to the fitness/unfitness of the parents and/or best interests of the child.

K. RECOMMENDATIONS

The court investigator's central function is to bring facts to the attention of the court. However, in some cases, the recommendations of the court investigator also are permitted. *See Adoption of Astrid*, 45 Mass. App. Ct. 538, 546 (1998) (no error in admitting an Report, including opinions, recommendations, and conclusions, where the court investigator testified, her sources were identified and the parents had the opportunity to rebut any adverse or erroneous material).

The recommendations section, if any, should be consistent with factual data presented in the body of the Report. The ultimate legal question of fitness/unfitness and/or best interests is for the court to decide. Therefore, the court investigator should refrain from recommending that the child be adjudicated "in need of care and protection," or that parents be found "unfit, or that it is in the best interests of the child to . . ." However, the recommendation section may serve a useful purpose to the court. It may contain recommendations for services that may be helpful to the child and family. In addition, the court investigator may make the court aware of alternatives which DCF, because of policy, regulations, or otherwise, did not present (e.g., that DCF did not approve of X's home because there are not enough bedrooms per DCF regulations). It is important for the court investigator to have considered what, if any, his/her recommendations are even if they are not included in the Report because the court investigator may be called upon to testify as an expert witness. *See G. L. c. 119, §21.*

VI. COURT INVESTIGATOR'S OATH

Court investigators must conclude their Reports with an oath sworn under penalties of perjury. The oath should affirm that the statements contained in the Report are accurately quoted, that the observations are accurately presented, that the facts written are true to the best of the court investigator's knowledge, information and belief, and that the opinions expressed within the Report are rendered through the exercise of the court investigator's best professional judgment. *See Appendix A: Court Investigator's Oath.*

VII. ATTACHING DOCUMENTS TO THE REPORT

The Report should stand on its own merit with no attachments. To ensure that important information from letters, reports, evaluations and the like, is read and considered by the trial

judge, any such important information should be included in the body of the Report and properly attributed. Letters, reports and evaluations may not added in part or in whole as an attachment to, or photocopied, scanned or copied and pasted into, the Report. **Court investigators should not reproduce clinical reports in part or in whole but should extract pertinent quotes and present the facts.** See *Adoption of Astrid*, 45 Mass. App. Ct. 538, 546 (1998).

VIII. FILING THE REPORT

The Report shall be filed in a timely manner. In accordance with Rule 11 of the Juvenile Court Rules for the Care and Protection of Children, the Report shall be filed in the clerk magistrate's office within **sixty days** after the appointment of the court investigator, unless the court orders otherwise. In addition to the requirement provided for in Rule 11, the timely filing of the Report is an essential component of the Pathways model of differentiated case flow management designed to improve permanency outcomes for children in Massachusetts.

If additional time is necessary, a motion for extension of time for the filing of the Report shall be in writing on a form approved by the Chief Justice of the Juvenile Court, signed by the court investigator and approved by a justice of the Juvenile Court. The court investigator shall file a motion for extension of time no later than fourteen days prior to the date the Report is due provided, however, that the court may permit the filing of a motion for an extension at some other time in the interests of justice. If the court approves a motion for an extension, the court investigator shall provide a copy of any such approved motion to all counsel of record and to any party who is not represented by counsel. See *Appendix B. Juvenile Court Form: Motion for Additional Hours or Extension of Time to File the Report*.

IX. UPDATES

The court investigator may be called upon by the court to update his/her investigation and file an addendum to the original Report. For example, this may occur when circumstances change, when a missing parent is located, or when a parent has petitioned for his/her review and redetermination right pursuant to G. L. c. 119, § 26. A court order is required to update an investigation. Except where an update is ordered because a missing parent has been located, the court investigator should focus on all circumstances and facts since the date of the previous Report. In some cases, the court investigator may be ordered to provide an update with a focus around a specific person and/or issue. The court will order a due date for the completion of the updated Report, which may be extended for a reasonable amount of time for good cause, pursuant to a timely filed Motion to Extend Time.

APPENDIX A

COURT INVESTIGATOR'S OATH

Commonwealth of Massachusetts

, ss

I hereby swear and affirm under the penalties of perjury that the statements contained in this Report are accurately quoted, that the observations are accurately presented, that the facts written are true to the best of my knowledge, information, and belief, and that the opinions expressed within the Report are rendered through the exercise of my best professional judgment.

Court Investigator

Juvenile Court

Date

(JV-128)

APPENDIX C



COMMONWEALTH OF MASSACHUSETTS

Administrative Office of the Trial Court
Office of Court Interpreter Services

Two Center Plaza, Boston, Massachusetts 02108
(T) 617.878.0343 (F) 617.367.9293

COURT INVESTIGATOR

Interpreter Request Form
(Please type or print clearly)

Investigator Name: _____

Investigator Phone Number: _____

Case Name: _____

Party in Need of Interpreter: _____

Court of Jurisdiction: _____

Docket Number: _____

Case Type/Matter: _____

Date of Interview: _____

Time of Interview: _____

Duration: _____

Address/Location of Interview: _____

Language Requested: _____

Notes:

- If you need an interpreter's assistance to establish a meeting time, please check this box.
An OCIS staff member will call you to make arrangements. July 2010

APPENDIX D

O.C.I.S. SERVICE REQUEST CANCELLATION
PRINT OR TYPE CLEARLY

| | | |
|------------------------|-----------------|--------------|
| Date of Service | Language | COURT |
|------------------------|-----------------|--------------|

| | |
|------------------|-----------------|
| Case Name | Docket # |
|------------------|-----------------|

Cancelled by: _____

Telephone: _____

Email: _____

Comments: _____

OCIS FAX LINE: 617-367-9293

Reminder: This is a Cancellation Notice. A rescheduled matter becomes a **New Service Request. Please fill out a new request form.**

DO NOT WRITE IN THIS SPACE

Received at OCIS on:
(Please Stamp)