

KEY:

Proposed Deletions = Red

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Proposed Additions = Blue

110 CMR 4.00: INTAKE

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~~4.01: Requests for Services~~ *Voluntary Requests for Department Services*

- (1) ~~110 CMR 4.01 through 4.15 do not apply to single service cases. For single service cases, see 110 CMR 4.70 et seq~~ 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) ~~Any person located within the Commonwealth may request social services from the Department. Persons requesting social services must complete a written application form. Persons needing assistance in completing the written application form shall be furnished with assistance by the Department. 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.~~

Commentary

~~The Department frequently receives requests for services from persons who, while physically located within the Commonwealth, might be classified as "transients" or "temporary residents". Examples include families who have stopped in Massachusetts while moving from Florida to Maine and who are living with relatives; families who are temporarily residing at the Ronald McDonald House while their child receives specialized care at Children's Hospital, etc. The Department will not exclude such families from eligibility for Department services on the basis of these residency characterizations. Instead, the Department will accept applications from any person who has a bona fide physical location within Massachusetts, and the Department will thereafter proceed to review and assess the application in accordance with 110 CMR.~~

~~4.02: Preliminary Review of Application~~

- (1) When the Department receives a written application for ~~social~~ services, *the Department shall conduct a preliminary review of it shall first review* the application to determine:
 - (a) the nature of the ~~social~~ 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; service(s) requested lie within the mandate of the Department,* and
 - (c) whether services are needed on an emergency basis.

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- (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 ~~for~~ Applications for Department Services

- (1) ~~If after review it is determined that the social service(s) requested lie within the mandate of the Department, and that the services are not needed on an emergency basis, then the Department (or provider) shall next conduct an assessment. See 110 CMR 5.00. The assessment shall be completed within 45 working days after receipt of the application by the Department. Thereafter, if the applicant is found eligible, the Department shall proceed in accordance with 110 CMR 6.00: Service Plans and Case Reviews~~ 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) ~~If after review it is determined that the social service(s) requested lie within the mandate of the Department, and that the services are needed on an emergency basis, the Department shall make a preliminary determination of the applicant's eligibility to receive social services. If the applicant is found eligible, the Department shall provide or authorize services within seven days from the date of receipt of the application; provided, however, that such determination of eligibility and provision or authorization of services will 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.~~ 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 ~~Social~~ Services

~~As part of the assessment or evaluation process (as well as during each case review—see 110 CMR 6.00), the Department shall determine an applicant's eligibility to receive social services. The Department shall make this determination on the basis of whether the applicant is in need of the social service(s) requested, in that the service, if provided, will assist the applicant to reach at least one of the departmental goals enumerated in M.G.L. c. 18B~~ 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: ~~Decision to Provide Social Services to Eligible Applicants~~ Factors to Consider in Determining Whether an Applicant Should Pay for Department Services

- (1) ~~The decision to provide voluntarily requested social services to eligible applicants shall take into consideration~~ 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); ~~and~~
 - (b) the client's ~~willingness~~ 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, unless the service(s) in question is/are not subject to sliding fee.~~
 - (c) The applicant's financial resources.
- (2) If ~~no~~ Department (or provider) service resources are currently unavailable, the eligible applicant ~~shall~~ may be placed on a waiting list.
- (3) ~~If an eligible applicant has an assessed ability to pay the entire cost of the social service, the applicant shall be provided information and referral services only, unless the service in question is exempted from the sliding fee requirement~~ 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.

Commentary

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~~person on the basis of such person's financial assets or income." Thus, the availability of the Department's services is always subject to sufficient appropriation of funds to the Department by the Legislature, in order to meet the amount of demand. Beyond that limitation, the availability of the Department's services is secondarily limited by a client's ability and willingness to pay a portion of the cost of those services—for the Department is statutorily required to "establish a schedule of fees" in proportion to the client's ability to pay for the services. See M.G.L. c. 18B, § 4.~~

~~On the basis of these statutory provisions, the Department has developed 110 CMR 4.00, which draw the distinction between universal eligibility to receive social services, and the consideration of assets and income in the Department's decision to provide social services subject to a sliding fee requirement. Thus, while no applicant will be ineligible for services on the basis of assets or income per se, the Department may take assets or income into consideration in a subsequent decision to offer services subject to a sliding fee agreement.~~

~~If the Department determines that an applicant is ineligible, then the Department shall give notice to said applicant. The notice shall be in writing and shall conform to the requirements set forth in 110 CMR 8.00.~~

4.06: ~~Notification of Eligibility~~ Sliding Fee for Services

~~If the Department determines that an applicant is ineligible, then the Department shall give notice to said applicant. The Notice shall be in writing and shall conform to the requirements set forth in 110 CMR 8.00. All Department services may be subject to a sliding fee as established by the Department, except for information and referral services.~~

4.07: ~~Redetermination of Eligibility~~ Children in Substitute Care, Eligible for Benefits

~~(1) The Department shall redetermine each recipient's eligibility for services at the following times in connection with the case review process: 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.~~

~~(a) At least every six months; or~~

~~(b) More often than every six months, when required on the basis of reliable information obtained by the Department or provider about actual or anticipated changes in an individual's circumstances and ability to pay for the service(s).~~

~~(2) Upon each redetermination of eligibility the Department (or provider) shall give notice to the recipient of the results of said redetermination. Whenever the recipient is found ineligible for services or whenever services are being reduced or terminated, the notice shall be in writing, and shall conform to the requirements set forth in 110 CMR 8.00. 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: ~~Sliding Fee for Services~~ Voluntary Placement Agreement for Substitute Care

~~All Department services may be subject to a sliding fee as established by the Department, except for the following services:~~

~~(1) Information and referral services.~~

~~(2) Family planning services to persons under 18 years of age.~~

~~(1) Execution: The Department may agree to provide substitute care for a child through a Voluntary Placement~~

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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 a 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.

(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.

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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.

4.08A: Fees for Voluntary Substitute Care Services

~~(1) The Department will assess a fee when it determines that a child will be entering out of home care on a voluntary basis. The fee will include a portion based on the family's income and a portion based on an amount equal to 75% of the child's Supplemental Security Income (SSI) benefit, 75% of the child's Title II benefits, and/or an amount equal to 75% of the child's adoption or guardianship subsidy, if the child receives SSI benefits, Title II benefits, or an adoption or guardianship subsidy. Guardians will not be subject to the income based portion of the fee. The fee for services will never exceed the actual cost of services.~~

~~No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below 150% of the federal poverty level the federal poverty levels for each size family will be used.~~

~~The fee for substitute care services will be calculated as follows:~~

~~(a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, and adoption or guardianship subsidy for a child will not be included in calculating gross income.~~

~~(b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08A will be charged.~~

~~(c) If the family's income is above 150% of the federal poverty level, the family will be charged as a portion of the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department. Guardians will not be subject to the income based portion of the fee.~~

~~(d) If the family's income is above 150% of the federal poverty level and the child in placement receives SSI benefits, Title II benefits, or an adoption or guardianship subsidy, and the parent(s) is the representative payee of such benefits, the fee will also include an amount equal to 75% of the child's SSI benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy. An amount equal to the remaining 25% will be retained by the parent or representative payee.~~

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~~(2) The fee is computed on a daily rate and is due monthly.~~

~~(3) The Department will provide written notice to the family of the procedures for requesting a full or partial waiver to the fee at the time that the fee is first imposed.~~

~~(4) The Commissioner, or designee, may authorize a full or partial waiver of the fee if the family establishes:~~

~~(a) that the imposition of the fee would create an extreme financial hardship and/or;~~

~~(b) that the actual and reasonable monthly expenses directly attributable to the child in placement exceed 25% of the child's monthly SSI benefit. A waiver under 110-CMR 4.08A(4)(b) shall be in the amount by which the directly attributable reasonable expenses exceed the 25% figure.~~

~~Commentary: This commentary is to provide examples where the actual and reasonable expenses directly attributable to the child in placement exceed 25% of the child's SSI benefit.~~

~~Family A is composed of two parents and two children, a son and a daughter. The daughter is in residential care but returns to the family home on weekends and vacations. The family is able to demonstrate through bills, receipts, etc., that the actual expenses of the clothing, food and recreational activities for their daughter is \$ 200.00 per month and that those expenses are reasonable. The daughter's SSI benefit is \$ 350.00 per month. The family may receive a partial waiver of the fee by \$ 112.50, the difference between \$ 87.50 (an amount equal to 25% of the child's SSI benefit) and the actual cost of the child's care and expenses.~~

~~Family B is composed of a mother and her son. The son is placed in a residential program and spends weekends and vacations with his mother. When the son visits his mother a nurse is required to assist in the child's care. The nurse costs \$ 75.00 per weekend for a total cost of \$300.00 per month. The son receives \$400.00 per month in SSI benefits. Under the Department's regulations, the mother would have paid \$300.00 to DSS and would have retained an amount equal to \$100.00 for the child's expenses. Upon request, the mother would receive a partial waiver of her fee by \$200.00 as well as an amount equal to any other documented expenses which are reasonable and directly attributable to the child, such as those set forth in Family A.~~

~~Family C is composed of a father and a thirteen year old daughter. The daughter receives \$ 375.00 in SSI benefits per month. The father uses a portion of that money to pay for a two bedroom apartment for his daughter and himself. The daughter is placed in a residential program through the Department. The father must maintain a two bedroom apartment for those times when his daughter visits on weekends and holidays. The father is able to demonstrate that the rental difference between a one bedroom and a two bedroom apartment is \$150.00. Under the Department's regulations the father is requested to pay a fee of \$371.25. The fee is composed of \$90.00 based on the family gross income and \$281.25, an amount equal to 75% of the child's SSI benefit. Upon request, the father may receive a partial waiver in the amount of \$56.25, which is the difference between:~~

~~(a) \$ 93.75, an amount equal to 25% of the child's SSI benefit; and~~

~~(b) \$ 150.00, the rental difference between a one bedroom and a two bedroom apartment.~~

~~(5) Any family may initiate a request for a full or partial waiver of the fee by filing a written request with the appropriate regional director and by providing appropriate documentation establishing that the fee would create an extreme financial hardship and/or that the actual and reasonable monthly expenses directly attributable to the child in placement exceed 25% of the child's monthly SSI benefit.~~

~~The Department's response to a request for a full or partial waiver shall be in writing. If the Department denies the request for a waiver in full or in part, the response shall include notice to the family of their right to request a fair hearing and the procedures for requesting such a hearing.~~

~~(6) If a family fails to pay the assessed fee, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.~~

~~(7) The family may request a fair hearing if:~~

- ~~(a) The family requested a full or partial waiver to the fee for substitute care services and the family disagrees with the denial of a waiver or the amount of the partial waiver;~~
- ~~(b) The family wants to dispute the computation of the fee or the termination of the service due to non-payment; or~~
- ~~(c) The family maintains that the Department erroneously has determined that family's gross income exceeds 150% of the federal poverty level for that size family unit.~~

~~If the family requests a fair hearing, services shall not be terminated until a fair hearing is held as long as the family continues to pay all assessed fees. If the issue for the fair hearing is the denial of a request for a waiver or the amount of a partial waiver of a fee for substitute care services under 110 CMR 4.08A(7)(a) then only the undisputed portion of the fee must be paid pending the fair hearing. If the issue for the fair hearing is whether the family's income falls at or below 150% of the federal poverty level under 110 CMR 4.08(7)(b) no fee is required pending the outcome of the fair hearing. However, if the denial of the full or partial waiver or the determination that the family's income is above 150% of the federal poverty level is upheld at the fair hearing, the total fee will be applied retroactively to the date the sliding fee agreement was signed, and the family will be responsible for paying past due amounts.~~

~~Commentary: This commentary is to provide an example of a situation where a family would pay the undisputed portion of a fee pending a fair hearing on a denial of a partial waiver to the fee.~~

~~Example: Family A is assessed a fee of \$ 250.00 for their child's placement. The family requests and is denied a partial waiver of the fee in the amount of \$ 50.00. During the pendency of the fair hearing the family would be required to pay a \$ 200.00 fee, which is the undisputed portion of the total assessed fee. If the denial of the partial waiver of the fee is upheld by the fair hearing, and it had been three months since the original fee was assessed, Family A would owe the Department \$150.00 for the past due amount of the fee.~~

4.08B: Fees for Nonvoluntary Substitute Care Services

~~(1) The Department will assess a fee when nonvoluntary substitute care services are provided to a child. The fee will include a portion based on the family's income and a portion based on an amount equal to 75% of the child's Supplemental Security Income (SSI) benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy, if the child receives SSI benefits, Title II benefits, an adoption subsidy or a guardianship subsidy. Guardians will not be subject to the income portion of the sliding fee. The fee for services will never exceed the actual cost of services.~~

~~No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below 150% of the federal poverty level, the federal poverty levels for each size family will be used.~~

~~The fee for nonvoluntary substitute care services will be calculated as follows:~~

- ~~(a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, an adoption subsidy, or a guardianship subsidy for a child will not be included in calculating gross income.~~
- ~~(b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08B will be charged.~~
- ~~(c) If the family's income is above 150% of the federal poverty level, the family will be charged as a portion of the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department. Guardians will not be subject to the income portion of the sliding fee.~~
- ~~(d) If the family's income is above 150% of the federal poverty level, and the child in placement receives SSI benefits, Title II benefits, an adoption subsidy, or a guardianship subsidy and the parent is the representative payee of such benefits, the fee will also include an amount equal to 75% of the child's SSI benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy. An amount equal to the remaining 25% will be retained by the parent or representative payee.~~

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~~(2) If a family fails to pay the assessed fee for nonvoluntary substitute care, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.~~

~~(3) The provisions of 110 CMR 4.08A(2) through 4.08A(5) and 4.08A(7) apply equally to 110 CMR 4.08B.~~

4.08C: Fees for All Services Other Than Substitute Care

~~(1) For all Department services subject to a sliding fee, other than substitute care services, the Department may assess a fee based solely on the family's income. Guardians will not be subject to this fee. The fee for services will never exceed the actual cost of services.~~

~~No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below the federal poverty level, the federal poverty levels for each size family will be used.~~

~~The fee for all services other than substitute care will be calculated as follows:~~

~~(a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, an adoption subsidy, or a guardianship subsidy for a child will not be included in calculating gross income.~~

~~(b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08C will be charged.~~

~~(c) If the family's income is above 150% of the federal poverty level, the family will be charged as the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department.~~

~~(2) If a family fails to pay the assessed fee, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.~~

~~(3) The provisions of 110 CMR 4.08A(2) through 4.08A(5) and 4.08A(7) apply equally to 110 CMR 4.08C.~~

4.09: ~~Parents of Children Who are in Substitute Care and are Entitled to SSI/Soc. Sec./VA/Other Benefits~~Department Decision-Making Authority for Children in Substitute Care Pursuant to a Voluntary Placement Agreement.

~~(1) The Department will require parents of children entitled to SSI/Soc. Sec./VA/Other Benefits to participate in the financial support of their children while in Department-funded substitute care. When children are placed in substitute care pursuant to either a Voluntary Placement Agreement or court-ordered custody, either:~~

~~(a) The parents will continue to serve as Representative Payee on behalf of their entitled children and pay the Department an amount equal to 75% of the monthly benefits towards, but not exceeding, the actual cost of each child's care provided by the Department. However, if the family's gross income as defined in 110 CMR 4.08A is at or below 150% of the federal poverty level, no payment will be requested; or~~

~~(b) The Department will apply for benefits and/or to be designated as Representative Payee on behalf of the entitled children. As Representative Payee, the Department will set aside in a Personal Needs Account (PNA) 10% of the benefits up to but not to exceed the amount of \$ 2,000, to be used only for the entitled child's personal needs. The remaining 90% of the benefits (100% of the benefits whenever the PNA reaches \$ 2,000) will be used to reimburse the Department for the cost of the entitled child's care. The Department periodically establishes a uniform "personal needs allowance" for children who receive third party benefits.~~

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~~(2) The entitled child shall be allowed, subject to approval by the Representative Payee, to spend from his/her PNA for personal needs. Whenever money is spent from the PNA, the PNA will be refunded with 10% of the entitled child's future benefits until the PNA reaches an amount of \$ 2,000.~~

~~The Department will use a standard form of Voluntary Placement Agreement which will contain an express agreement between the Department and the parents that the parents will comply with requirement 110 CMR 4.09(a) or (b).~~

~~It should be noted, in contrast, that in cases of adoption or guardianship, the adoptive parent/legal guardian retains the child's entire SSL/Soc. Sector other payment, which is then supplemented by the Department, up to the full amount of the child's adoption or guardianship subsidy.~~

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.

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.

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(4) Permission of 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 ~~Placement Agreements – Execution~~

~~Upon the request of one or both parent(s) or parent substitute(s) and when supported by an assessment of the needs of the child which has been conducted by the Department, the Department may agree to provide substitute care for a child. Every voluntary placement into substitute care shall be accomplished by completion of the Department's standard form of Voluntary Placement Agreement, between the parent(s) or parent substitute and the Department.~~

(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.

(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 : ~~Voluntary Placement Agreements – Form~~ Safe Haven

~~The Department shall utilize a standard form of Voluntary Placement Agreement, as established by the Department. This Voluntary Placement Agreement shall automatically expire after six months, and must be re-executed if the voluntary placement is to be continued. All Voluntary Placement Agreements shall be approved~~

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~~by, and then signed by, a departmental Area Director or Assistant Area Director or his/her designee. 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 the client and the Department.~~

(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.

4.12 : ~~Voluntary Placement Agreements — Termination~~

~~(1) Any Voluntary Placement Agreement may be terminated by one or both parent(s) who have legal custody of the child giving written notice to the Department, regardless of which parent has signed the Voluntary Placement Agreement (i.e., if mother signs the Voluntary Placement Agreement, father may terminate it so long as he has some form of legal custody of the child).~~

~~(2) In any case where a parent gives notice to the Department terminating a Voluntary Placement Agreement (including but not limited to cases where one parent has signed the agreement and the other parent gives notice to terminate it) the Department shall honor the Agreement for a period of 72 hours thereafter. If, during said 72 hour period, the Department determines that the child would be at risk of abuse or neglect if returned home, the Department may institute court proceedings to obtain custody of the child.~~

~~(3) If any child(ren), who was placed in substitute care as a result of a voluntary placement agreement, is returned home to live with her/his parent(s), the voluntary placement agreement shall automatically terminate. If the parent wishes to voluntarily place the child back into substitute care, a new voluntary placement agreement must be executed pursuant to 110 CMR 4.10. 110 CMR 4.12(3) does not apply if the child(ren) is visiting her/his parents.~~

4.13 : ~~Voluntary Placement Agreements — Mature Child~~

~~The Department may accept a Voluntary Placement Agreement from a mature child, without signature of any parent(s). However, such Voluntary Placement Agreements (signed only by the mature child) will only be accepted and honored by the Department for a period of 72 hours thereafter. During that 72 hour 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. During that 72 hour period, parent(s) shall not have the right to revoke or terminate the Voluntary Placement Agreement.~~

~~nor shall they 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. At the conclusion of the 72 hour period, the Department shall either return the child to his/her parent(s), or shall institute court proceedings to obtain custody of the child, or shall obtain a Voluntary Placement Agreement signed by the mature child's parent(s).~~

4.14 : ~~Voluntary Placement Agreements — Miscellaneous~~

~~In addition to the rights and duties enumerated in the standard form Voluntary Placement Agreement, the Department shall also exercise the following rights:~~

~~(1) Interviews of Children. The Department may receive requests from various sources to allow third parties to interview child(ren). Examples include: media, police officers, district attorneys, other social work professionals (however 110 CMR 4.14 does not apply to interviews of children conducted by social workers employed by the Department), etc.~~

~~(a) From a Police Officer or a Representative of the District Attorney's Office. The parent(s) retain the right to determine if their child will be available for an interview unless the child is a mature~~

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~~minor and consents on his/her own. If a child is a possible or known defendant in a criminal action, the Department, Department foster/pre-adoptive parents or other Department providers caring for children in the Department's care cannot consent to having the child interviewed irrespective of whether or not the child is considered by the Department to be mature. In this situation, the Department may go to court and request the appointment of a Guardian Ad Litem with authority to determine whether the child should/will consent to participate in any kind of police interrogation.~~

~~(b) All Other Requests. The Department, upon receipt of such requests, will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent(s) wishes. If the Department is unable to contact the parent(s), the Department shall 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 any public school, private school, group care facility, day care facility, residential placement, or other such facility, the facility may request or require a variety of consent forms to be signed. Examples include: sports participation forms, field trip forms, driving forms, etc. The Department (including departmental foster parents) will exercise its clinical judgment to determine whether or not it is in the child's best interests to have the form signed, and the Department (including departmental foster parents) will consent or deny on that basis.~~

~~(3) Permits, Licenses. The child may wish to obtain various permits or licenses. Examples include: hunting and fishing permits, driver's licenses, motorcycle licenses, etc. Such permit(s) or license(s) may require parental consent or signature. If this occurs, the Department will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent's wishes. If the Department is unable to contact the parent(s), the Department will exercise its clinical judgment to determine whether or not 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) Permission to Marry. The Department (including departmental foster parents) will 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 will make all reasonable efforts to contact the parent(s). If contact with the parent(s) is made, the Department will honor the parent(s) wishes. If the Department is unable to contact the parent(s), the Department will exercise its clinical judgment to determine whether or not it is in the child's best interests to enlist, and the Department will consent or deny on that basis.~~

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~~(6) For all Issues Relative to Medical Authorizations. See 110 CMR 11.00.~~

~~(7) Religion. The Department (including departmental foster parents) will not procure or authorize any baptism or other religious ceremony for any minor child in its care pursuant to a Voluntary Placement Agreement.~~

4.15 : Surrenders For Adoption

~~(1) The Department's social services are available to any birth parent(s) who voluntarily surrender their child(ren), to assist the parent(s) with the loss of their child(ren). Such services may include, but need not be limited to:~~

- ~~(a) counseling on separation and loss;~~
- ~~(b) involvement in a surrendering parent support group.~~

~~(2) The Department shall observe the following procedures prior to taking a voluntary Surrender from a birth parent:~~

- ~~(a) Explore alternatives to voluntary surrender with the parent(s), including casework services to assist parent(s) and child(ren) to remain together.~~
- ~~(b) If casework services are accepted, provide the services set forth in the service plan.~~
- ~~(c) If services are declined, the social worker shall record in writing in the case record the offer and declination of services.~~
- ~~(d) Before accepting a surrender, the social worker shall collect and record in the case record psycho-social and medical information about the child and the child's biological family.~~
- ~~(e) When one of the birth parent(s) is not present, the social worker shall obtain information relevant to assisting in locating the parent, so that placement or surrender can be explored.~~

~~(3) All surrenders shall be taken in conformity with M.G.L. c. 210, § 2. In addition:~~

- ~~(a) Parent(s) seeking to surrender their child(ren) shall be encouraged to bring two witnesses of their own choice in order to execute the surrender(s).~~
- ~~(b) In the event parent(s) decline to bring two witnesses of their own choice, one or more department employees shall act as witness on the parents' behalf.~~
- ~~(c) The Department will accept a voluntary surrender from any parent, including any parent who is a mature child, in conformity with 110 CMR 4.01 through 4.15. When a parent who is a mature child seeks to voluntarily surrender a minor child, the Department shall first explore with the mature child parent alternative family resources, including adoption by an extended family member.~~
- ~~(d) Parents of Indian (Native American) heritage shall be informed of their rights pursuant to the Indian Child Welfare Act.~~

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

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) During Hours on Business Days 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. , telephone calls by mandated and non-mandated reporters should be directed to the Department. The caller should select the area or regional office which covers the residence of the parent(s) or caretaker(s) of the child(ren) in question. When the residence of the child's parent(s) or caretaker(s) is unknown or outside the Commonwealth, or if the child is located in a hospital, the report should be made to the area or regional office closest to the caller, but shall be accepted by the Department if made to any area or regional office of the Department. Each area and regional office of the Department shall have one or more employees designated to receive "51A" reports.~~

~~(2) During Evenings, Weekends, and Holidays. To report known or suspected abuse or neglect of children,~~

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~~telephone calls by mandated and non-mandated reporters should be directed to the statewide Child At Risk Hotline (1-800-792-5200). 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.

(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 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 himself. 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.

~~(1) Reports Not Constituting Child Abuse or Child Neglect. The Department sometimes receives reports of subject matter or events which clearly do not fall within the Department's mandate (i.e. abuse or neglect of children). Examples include: reports of abuse of young adults (over 18 years of age); reports of elder abuse; reports that a certain teenager is not being allowed to date or is not being given money for the high school prom; reports that a certain department store mail order catalogue contains pornographic pictures of children. If an individual attempts to report a matter which is not child abuse or neglect to the Department or to the Child-At-Risk Hotline, the reporter shall be advised that the report is not appropriate. The Department shall treat such call not as a report of abuse or neglect, but rather as a request for information and referral services. See 110 CMR 3.00. The Department shall also treat incomplete reports as requests for information and referral services. Example: Caller reports seeing an unknown child struck by an unknown adult; but has neither name nor address nor other identifying information for either the child or the adult.~~

~~(2) Transcription of Information. For any calls received which report child abuse or child neglect, the Department or Hotline employee shall transcribe the information into a computerized data base maintained by the Department. The information entered into the database will be printable onto a "51A" standard report form, as established by the Department.~~

~~(3) Identity of Reporter/Anonymous Reports. The caller must give his/her name and address if s/he is a mandated reporter. The Department will accept anonymous reports from non-mandated reporters if the caller refuses to identify him/herself. However, if the reporter gives identifying information the name will in fact be recorded for later use by the investigator. Mandated reporters shall be informed that they are required by law to submit a written report to the Department within 48 hours after making the oral report. (See M.G.L. c. 119, § 51A).~~

4.21 : Screening of Reports of Alleged Abuse or Neglect

Upon receipt of any oral or written "51A" report (whichever is received first), the Department shall immediately screen such report. The purpose of screening is to identify children at risk of abuse or neglect from a caretaker, and to distinguish the need for an emergency or non-emergency response. The screener may also provide the caller with information about other authorities (police, District Attorney, licensing agency, etc.) who should be called. Three examples of "screen out" situations are:

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- ~~(a) report where the identified alleged perpetrator is not a caretaker (but the Department shall not screen out reports on the sole basis that no alleged perpetrator is identified or that the perpetrator is unknown);~~
- ~~(b) report where the incident or condition reported by the caller is so old that it should be screened out because of its outdated character;~~
- ~~(c) demonstrably unreliable or counterproductive multiple reports.~~

~~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 4.28.~~

(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.

Commentary

This Commentary further explains the three screening decisions set forth in 110 CMR 4.21(a) through (c):

~~(1) The "caretaker" distinction is an important one, for the Department's primary duty is to protect children from abuse or neglect inflicted by their parents or parent substitutes. See, M.G.L. c. 119, § 1, paragraph 2: "The purpose of this chapter is to insure that the children of the Commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of *parents or parent substitutes*" (emphasis added). See also, 42 U.S.C. § 5102: "'Child abuse and neglect' means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of 18 ... by a person who is responsible for the child's welfare" (emphasis added).~~

~~For example, the rape of a small girl by a stranger in a vacant lot, while certainly an incident of "child abuse" in the broad sense, is not the type of child abuse which the Department's investigation process was created to address. The criminal justice system remains primarily responsible for the investigation of such acts.~~

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~~Thus, if the Department receives a report where the alleged perpetrator is identified and is clearly a non-caretaker, the Department shall screen out such a report. However, Department employees shall refer the case to the District Attorney if the allegations contained in the report fall into one of the categories under M.G.L. c. 119, § 51B(4). The Department shall also provide the caller with the name, address, and telephone number of the local police and/or appropriate District Attorney. The Department can also offer voluntary services to the child victim and his/her family, as appropriate. (See 110 CMR 4.50 through 4.54 for mandatory referral to the District Attorney).~~

~~(2) The Department sometimes receives reports of incidents which the caller identifies as very outdated (for example, a caller who reports an incident of a parent seen striking a child five years ago). The Department shall "screen out" reports for age where the reporter has no reasonably current information to convey, and where there is no reason to suspect that the child is still at risk of ongoing abuse. When a social worker determines that a call should be screened out, the screening information and recommendation to screen out shall be forwarded to the Area Director or his/her designee, who shall make the final decision.~~

~~(3) In extreme cases, reports may also be screened out for a demonstrated history of unreliability (i.e., a series of similar reports from the same reporter, which have on several occasions been investigated and found to be without merit.) The Department shall "screen out" reports for unreliability in cases where the repetitive and meritless nature of the reports is well established. When a social worker determines that a call should be screened out, the screening information and recommendation to screen out shall be forwarded to the Area Director or his/her designee, who shall make the final decision.~~

~~Reliable but repetitive reports may be "screened out" by the Department:~~

~~Multiple 51A's on the same incident:~~

~~It is not unusual for professionals and nonprofessionals to learn of an abusive incident over a broad range of time. Once learning of the incident, they quite appropriately file a 51A report.~~

~~Example: Child is brought to Hospital A by parents. Hospital A believes injuries were the result of abuse, and files a 51A. However, Hospital A is a small community hospital, and a large well known hospital with more pediatric expertise is not far away. Hospital A refers or transfers the child to Hospital B the next morning, for further examination and testing. Hospital B, upon examining the child, also files a 51A.~~

~~Example: Mrs. H.'s daughter Tina was severely sexually abused while in the care of a babysitter. The doctor and police involved in the incident file their 51A reports. The Department investigates and supports the report. Nine days later, Tina begins to tell her story to her new therapist who is mandated to report. Six months later, a relative learns of the incident and calls to report sexual abuse. A year later, Mrs. H. changes therapists ... etc.~~

~~Duplicate investigations are unnecessarily intrusive to a family and do not permit effective use of the Department's staff resources. In situations such as this, the screening decision shall be made by the Area Director, or his/her designee.~~

4.22 : Screening Process: Information Gathered by the Department –Collateral Contacts

~~In addition to consultation with the reporter, screening will include checking of Department files and the Department's Central Registry. Screening may also include collateral contacts with third parties. Any such collateral contacts made shall be documented in writing on the 51A form.~~

~~(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~~

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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;

(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 ~~Entry Into Central Registry~~

~~Each 51A report (whether or not "screened out") shall thereafter be entered into the Department's Central Registry.~~

~~The Department shall notify mandated reporters in the event that it decides to screen out, or screen for follow up, a 51A report filed by said mandated reporter. Said notification of the Department's screen out decision shall be accomplished by means of a standard form letter established by the Department.~~

(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 ~~Identification of Family Members~~

~~Prior to the initiation of an investigation, the screener shall identify all family members that are known to the screener. For the purpose of screening and investigation, family is defined as all family members and other individuals residing in the home, children in DCF placements, children residing out of the home, and any parent/parent substitute living out of the home.~~

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.

4.25 : Documentation and Notification of a Screening Decision ~~Emergency and Non-emergency Responses~~

~~(1) If the screener determines:~~

- ~~(a) that the report constitutes an event or subject matter within the Department's mandate; and~~
- ~~(b) that the reported condition poses a threat of immediate danger to the life, health, or physical safety of the child; then the screener shall designate the report an "emergency report" and cause the matter to be assigned for an immediate investigation as provided hereafter in 110 CMR 4.26.~~

~~(2) If the screener determines:~~

- ~~(a) that the report constitutes an event or subject matter within the Department's mandate; and~~
- ~~(b) that the reported condition does not pose a threat of immediate danger to the life, health or physical safety of the child; then the screener shall designate the report a "non-emergency report" and cause the matter to be assigned for an investigation as provided hereafter in 110 CMR 4.27.~~

(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 ~~Investigation of Emergency Reports~~

~~(1) Once a report is designated an "emergency report", the Department shall immediately initiate an emergency response. The first priority of an emergency response is to view the child(ren) in question, and to determine the condition of any other children residing in the same household. The children are visited a minimum of one time within 24 hours after receipt of the report. This meeting should occur in the home; however, in certain situations the social worker and supervisor may decide that another location is more appropriate (e.g., the child is hospitalized, the injury/incident occurred outside the home, the child would be placed at greater risk if interviewed in the home).~~

~~Parents and other individuals living in the home are visited a minimum of one time, within 24 hours after the~~

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receipt of the report. The investigator and supervisor determine which family members will be contacted based on their determination of which individuals would be expected to provide significant information regarding the current allegations.

~~(2) If an emergency report is received by the Child At Risk Hotline during evenings, weekends or holidays, the Child At Risk Hotline staff may request the assistance of local law enforcement personnel if on-call investigation personnel cannot immediately respond. This will occur in circumstances where there is an apparent immediate threat to the safety of the child and where due to geographic distances the on-call social worker cannot respond as quickly as the situation demands. In these circumstances, the Hotline will contact the local police department and ask the police to verify the allegations (e.g., abandonment, intoxicated caretaker, violent domestic dispute) and if necessary to provide temporary protection for the child until the Department's on-call personnel can reach the child's location.~~

~~(3) If an individual or family prevents an investigator from viewing a child who is the subject of the report or from determining the name, age or condition of other children in the same household that the investigator has determined should be viewed, the investigator shall, if the investigator has reason to believe that the child is in immediate danger of serious physical harm resulting from abuse or neglect, seek the aid of the local police in entering the home or otherwise viewing the child. The investigator shall, if practicable, obtain the approval of his/her supervisor, and may in addition choose to consult with a member of the legal staff to determine what legal action may be warranted. In the alternative, the investigator may use the 24-hour Judicial Hotline to obtain judicial assistance, with the approval of his/her supervisor. If the investigator remains unable to view the child, the investigator's supervisor will make the investigation decision based on his/her evaluation of the nature and contents of the 51A report and any collateral information.~~

~~(4) Once the child(ren) have been viewed and their condition determined, the Department must make an initial determination of the child(ren)'s safety and a determination whether to seek custody of the child(ren) within 24 hours of receipt of the report and may:~~

~~(a) determine that the child's condition presents an emergency, in which case the investigation of the emergency report shall be completed as soon as possible and in no event later than five working days from the time the report is received. The investigation shall be conducted in the same manner as investigations of non-emergency reports (set forth in 110 CMR 4.27).~~

~~(b) determine that the child's condition does not present an emergency, in which case the investigation of the emergency report shall be conducted in the same manner and in the same time frame as investigation of non-emergency reports (set forth in 110 CMR 4.27).~~

(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~~Investigation of Non-emergency Reports~~

~~(1) The investigation shall include a viewing of the child who is the subject of the report and a visit to the home of the child who is the subject of the report both of which shall occur within three working days after the screening decision. (See 110 CMR 4.27(3) for procedures when an individual or family refuses to permit a viewing of the child.) The investigator may waive the visit to the home of the child in appropriate circumstances (for example, if the abuse alleged occurred outside the child's home in a day care facility and if the child is viewed at the day care facility). The investigation shall include a determination of the name, age, and condition of other children in the same household. The Department will ensure that the investigation includes the linguistic capacity and cultural knowledge needed to perform a fair and comprehensive investigation of the reported child and family.~~

~~(2) The investigation shall include consulting with the reporter, checking Department files and the Central Registry, arranging medical examination(s) where appropriate, and making any collateral contacts necessary to obtain reliable information which would corroborate or disprove the reported incident and the child's~~

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~~condition. In the course of making such collateral contacts, Department social workers may disclose sufficient information about the child(ren) and the family as is reasonably necessary to investigate the allegations made in the 51A report. However, the parent(s) or caretaker(s) of the reported child, the reported child him/herself, and the reporter, are to be considered the primary sources of information. Parents and other individuals living in the home are visited a minimum of one time, the initial visit occurs in the home within three working days after the screening decision. Any parent or parent substitute living out of the home, who can be located, is contacted a minimum of one time. The nature of the contact is determined by the investigator and supervisor.~~

~~(3) If an individual or family prevents an investigator from viewing a child who is the subject of the report or from determining the name, age or condition of other children in the same household that the investigator has determined should be viewed, the investigator shall, if the investigator does not have reason to believe that the child is in immediate danger of serious physical harm resulting from abuse or neglect, immediately inform his/her supervisor. The supervisor shall confer with a member of the legal staff to determine what legal action may be warranted. The Department may choose to waive a home visit if it is able to view the child in some other location. If the investigator remains unable to view the child, the investigator's supervisor will make the support/unsupport decision based on his/her evaluation of the nature and contents of the 51A report and any collateral information.~~

~~(4) The manner in which the investigator views the child who is the subject of a 51A report shall take into account and shall respect the child's age, sex, and other circumstances, particularly with respect to removal of the child's clothing.~~

~~(5) At the time of the first contact with parent(s) or caretaker(s), the investigator shall deliver to said individual a statement of rights which shall include written notice that a 51A report has been made, the nature and possible effects of the investigation, and that information given could and might be used in subsequent court hearings. Such notice shall be in a form prescribed by the Department.~~

~~(6) Based on the investigation, the investigator shall determine:~~

- ~~(a) the existence, nature, extent and cause or causes of the alleged abuse or neglect;~~
- ~~(b) the identity of the person or persons alleged to be responsible therefor, if possible;~~
- ~~(c) the name, age and condition of all other children in the same household; and~~
- ~~(d) all other pertinent facts or matters which in the opinion of the investigator are necessary to support or unsupport the allegation which was reported to the Department.~~

(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

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occurred outside the child(ren)'s home, such as a childcare facility and the child(ren) is viewed at the childcare facility.

(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 ~~Screening and Investigation Household or Family Members, Foster Parents, Pre-adoptive Parents or Area Board Members~~

~~Whenever the Department receives a 51A report involving a Department employee, or a member of a Department employee's immediate household, the report shall immediately be referred to the Commissioner or designee. The Commissioner or designee will assign the report to the Central Office Special Investigations Unit or to an independent contracted agency for screening and/or investigation.~~

~~Whenever the Department receives a 51A report involving a Department employee's non-household family member, Department foster parent, pre-adoptive parent, or area board member, the report shall be screened by the area where the home is located and if the report is screened in, the matter shall thereafter be referred to the Central Office Special Investigation Unit, or to another Area or Regional Office of the Department (not the Area or Regional Office which has primary responsibility for the family member, foster home, pre-adoptive parent, or area board member) or to an independent, contracted agency (provider) for investigation. The Central Office Special Investigations Unit shall also investigate any other 51A report at the request of the Commissioner.~~

(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)

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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.

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 ~~investigator~~ response worker shall consider the ~~potential~~ harm to the child(ren) ~~that caused by~~ such removal ~~inevitably entails~~.

(2) A child may be immediately taken into custody ~~by the social worker~~ if, after viewing the child, the ~~social worker~~ Department's response worker finds reasonable cause to believe:

- (a) ~~that a~~ A condition of serious abuse or neglect (including abandonment) exists; ~~and~~
- (b) ~~that, as~~ As a result of that condition, removal of the child is necessary ~~in order~~ to avoid ~~the~~ a substantial risk of death or serious ~~emotional or~~ physical injury ~~or sexual abuse to of~~ the child(ren); ~~and~~
- (c) ~~that the~~ 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) If an emergency removal occurs, the removing social worker shall on the next working day make a written report which shall state the reason(s) for such removal, shall be counter signed by the Supervisor, and shall thereafter be filed in court together with a petition pursuant to M.G.L. c. 119, § 24.~~

(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 ~~Assignment of Second or Subsequent Reports for Investigation~~

~~In the event that a second or subsequent report is received and screened in on an open case or any case which has been closed during the previous twelve months, the Department shall not assign such report for investigation to any social worker who has had any previous responsibility for the case, unless a second report is received and screened in during the investigation of the initial report (in which case the same social worker may be assigned to investigate both reports) or unless there is no social worker meeting the foregoing description among the staff of the office in question.~~

- (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

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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 ~~Time Frames for Completion of Investigation~~

~~(1) The investigation of all "emergency reports" shall commence within two hours of initial contact and shall be completed within five working days after the receipt of the report by the Department. The results of the investigation shall be in writing, transcribed onto a "51B" standard investigation form, as established by the Department.~~

~~(2) The investigation of all "non-emergency reports" shall commence within two working days of initial contact and shall be completed within 15 working days following the receipt of the report by the Department. The results of the investigation shall be in writing, transcribed onto a "51B" standard investigation form, as established by the Department.~~

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 ~~to~~ – Supported, Substantiated Concern, or ~~Unsupported~~ a Report

~~(1) After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are "supported" or "unsupported".~~ 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
- (b) A determination as to whether Department intervention is necessary to protect the safety and well-being of the child(re) 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) To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any finding with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker did inflict abuse or neglect upon the child in question. "Reasonable Cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected.~~

~~Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g., professionals, credible family members); and the social worker and supervisor's clinical base of knowledge.~~

(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

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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) Each determination by the Department that the allegations of a 51A report are "unsupported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are unsupported, in a form letter established for use by the Department. All collaterals who were contacted by the investigator, shall be notified in writing of the decision to un-support the report, unless the target of the investigation requests that such notification not occur. If the 51A report in question was filed by a mandated reporter, the mandated reporter is notified of the decision~~

~~on a form established by the Department. If the 51A report in question contained 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 4.43, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.43, then the director or owner of such facility shall also be sent a copy of said letter.~~

(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) Each determination by the Department that the allegations of a 51A report are "supported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are supported, in a form letter established for use by the Department. If the 51A report in question was filed by a mandated reporter, a copy of the letter shall also be provided to the mandated reporter. In addition, upon request by any mandated reporter of a supported 51A report, the Department shall inform the mandated reporter of the social service(s), if any, that the Department intends to provide to the child and/or the child's family. If the 51A report in question contained 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 4.43, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.43, then the director or owner of such facility shall also be sent a copy of said letter.~~

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

~~(5) Whenever the Department, after an investigation, supports a 51A report on a child under the age of three, the family shall be referred for early intervention services. The department will provide the early intervention program with the minimum information needed to contact the family, utilizing a form developed by the Department.~~

4.33 : Notice of Unsupported Response Decision Perpetrator/Caretaker

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(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).

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

~~(1) Perpetrator: For any investigated and supported report of abuse or neglect, the Department shall record the identity(ies) of alleged perpetrator(s) when:~~

~~The incident of child abuse or neglect has been supported and referred to the District Attorney pursuant to M.G.L. c. 119, § 51B(k) and there is substantial evidence indicating that the alleged perpetrator was responsible for the abuse or neglect. See 110 CMR 4.37.~~

~~(2) Perpetrator: For any investigated and unsupported report of abuse or neglect, the Department's Central Registry shall automatically record perpetrator "not applicable".~~

~~(3) Perpetrator: Whenever the Department "supports" a 51A report and whenever the name(s) of alleged perpetrator(s) are recorded as such on the Registry of Alleged Perpetrators, the Department shall 20 working days after the referral is made to the District Attorney notify each alleged perpetrator that his/her name will be maintained on the Registry of Alleged Perpetrators. The Department shall utilize a form letter established for use by the Department. The form letter shall include notification to the alleged perpetrator(s) of the right to a fair hearing to appeal said listing. If the alleged perpetrator is a child under age 18, the letter shall be directed to the child, with a copy to the child's parent(s) and/or guardian. (See 110 CMR 10.06(9)(c) for a stay of fair hearing proceeding at request of the District Attorney.)~~

~~(4) Caretaker: Where the Department has no reasonable cause to believe that a caretaker was the perpetrator of abuse or neglect, the Department will unsupport the report. (Note, however, that the Department may voluntarily refer or be required to refer the matter to appropriate law enforcement agencies. See 110 CMR 4.50 et seq. Note also that the Department may offer voluntary services as appropriate.)~~

Commentary

~~The meaning of a supported or unsupported report is often misunderstood, primarily because the Department sometimes unsupports a report where a child has clearly suffered an injury. While at first blush this can appear contradictory, it is in fact most often the result of the application of the important distinction between caretakers and non-caretakers.~~

~~The caretaker distinction is an important one, for the Department's primary duty is to protect children from abuse or neglect inflicted by their parents or parent substitutes. See M.G.L. c. 119, § 1, paragraph 2: "The purpose of this chapter is to insure that the children of the Commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes." (emphasis added).~~

~~The following examples may serve to clarify.~~

~~Example A: The Department receives a report of a small boy with bumps around his lips and nose. It is screened in. It is investigated. The investigator determines that the injury occurred when the small boy pulled a heat lamp from his parents' bathroom onto his face. There is no evidence that the accident occurred as a result of either parents' neglect. The report is unsupported, as no incident of abuse or neglect is determined to have~~

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~~occurred. Note that if the facts were slightly different (for example, if the Department determined that the injury occurred because the small boy had been left alone at home all day) then the Department could have supported the report as neglect.~~

~~Example B: Teenaged girl reports that father has been sexually molesting her. In these circumstances, the Department will list the father as the alleged perpetrator. Since he is a caretaker, the Department will support the report, if the Department determines it has reasonable cause to believe the reported incident(s). The Department will also refer the matter to the District Attorney (See 110 CMR 4.50 et seq.) and offer services as appropriate.~~

~~Example C: A school nurse reports that a 16 year old female high school student has been sexually molested. After investigation, the Department determines that the perpetrator is the girl's 16 year old boyfriend. Since he is not a caretaker, the Department will unsupport the report. Note that the Department may refer the case to the District Attorney (See 110 CMR 4.50 et seq.) and offer voluntary services as appropriate.~~

~~Example D: Infant is brought to pediatrician by mother with numerous fresh facial bruises. Pediatrician characterizes them as non-accidentally inflicted. Mother claims infant was in bruised condition when returned by her ex-husband (infant's father) from weekend visitation. Father claims infant was unblemished when returned to mother by him. Both mother and father state no other caretakers had child recently. In this circumstance, mother and father may both be listed as alleged perpetrators on the Department's records if in addition to support the report, the report is referred to the District Attorney. Once again, the Department's supported decision in no way reflects a determination by the Department of the identity of the perpetrator. Note that the Department will offer voluntary services as appropriate.~~

~~Example E: 12-year old boy is taken to hospital emergency room with broken ribs. Parent(s) cannot be located. Boy tells doctor he was attacked by gang of neighborhood youths he does not know, and robbed. Hospital files 51A report, and report is screened in to investigate possible neglect. Parents are thereafter located and it is determined they were not neglectful with regard to the boy's injury. The Department will unsupport the report, because even though the young boy suffered a clear incident of physical injury, the abuse was not caused by caretaker(s), and there was no neglect by his caretakers. Note that the Department will offer voluntary services as appropriate.~~

~~Example F: The Department receives a report of a young teenager currently in foster care who has had several front teeth knocked out. It is screened in. It is investigated. The investigator determines that the young teenager has at various times given divergent explanations for his injury: sometimes he says his biological father punched him, sometimes he says his grandfather punched him. Both father and grandfather deny punching him. There are no witnesses to the event. There is no suggestion that the injury was accidental and a dental examination confirms this. The report is supported. Both father and grandfather are listed as alleged perpetrators. The Department's supported decision means the Department has determined it has reasonable cause to believe an incident of abuse by a caretaker occurred to the young teenager. The supported decision in no way reflects a determination by the Department of the identity of the perpetrator.~~

4.34 : Notice of Supported or Substantiated Concern Response ~~Department's Custodial Powers – Miscellaneous~~

(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

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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.

(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*.

~~If the Department seeks and obtains court ordered custody of a child, in addition to the rights and duties enumerated in M.G.L. c. 119, § 21 pertaining to the definition of "custody", the Department shall also exercise the following rights with respect to any child in the court ordered custody of the Department:~~

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~~(1) Interviews of Children: The Department may receive requests from various sources to allow third parties to interview child(ren). Examples include: media, police officers, district attorneys, other social work professionals (however 110 CMR 4.34 does not apply to interviews of children conducted by social workers employed by the Department), etc.~~

~~(a) From a Police Officer or a Representative of the District Attorney's Office: the Department will exercise its clinical judgment to determine whether or not it is in the child's best interest to be interviewed, and the Department will consent or deny on that basis. If a child is a possible or known defendant in a criminal action, the Department, Department foster/pre-adoptive parents or other Department providers caring for children in the Department's custody cannot consent to having the child interviewed irrespective of whether or not the child is considered by the Department to be mature. In this situation, the Department may go to court and request the appointment of a Guardian Ad Litem with authority to determine whether the child should/will consent to participate in any kind of police interrogation.~~

~~(b) All Other Requests: The Department, upon receipt of such requests, will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent(s)' wishes, unless the Department believes that the parents' wishes are contrary to the best interests of the child. If the Department is unable to contact the parent(s), the Department shall 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 any public school, private school, group care facility, day care facility, residential placement, or other such facility, the facility may request or require a variety of consent forms to be signed. Examples include: sports participation forms, field trip forms, driving forms, etc. The Department (including departmental foster parents) will exercise its clinical judgment to determine whether or not it is in the child's best interests to have the form signed, and the Department (including departmental foster parents) will consent or deny on that basis.~~

~~(3) Permits, Licenses: The child may wish to obtain various permits or licenses. Examples include: hunting and fishing permits, driver's licenses, motorcycle licenses, etc. Such permit(s) or license(s) may require parental consent or signature. The Department will exercise its clinical judgment to determine whether or not 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 Relative to Medical Authorizations: See 110 CMR 11.00 et seq.~~

~~(5) Religion: The Department (including departmental foster parents) will not procure or authorize any baptism or other religious ceremony for any minor child in its custody.~~

4.35 : Institutional Settings: Coordination Between Agencies ~~Access to the Central Registry~~

(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.

~~(1) Department staff may have access to the Central Registry for the purpose of:~~

- ~~(a) screening applicants for employment, including volunteers and student interns, by the Department, or one of its contracted providers, in a position with direct contact with clients or children;~~
- ~~(b) screening applicants to become foster or adoptive parents;~~
- ~~(c) screening a report filed under M.G.L. c.119, § 51A;~~
- ~~(d) conducting an investigation under M.G.L. c.119, § 51B;~~
- ~~(e) assisting in providing appropriate services to any child in the care or custody of the Department;~~
- ~~or~~
- ~~(f) assisting in providing appropriate services to any family having an open case with the Department~~

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~~(2) State child welfare agencies of another state may, upon request, receive information from the Central Registry for the purpose of:~~

- ~~(a) determining whether to approve a prospective foster or adoptive parent; or~~
- ~~(b) to carry out the agencies responsibilities under the 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 applicants for employment, volunteers, interns, foster or adoptive parents or other entities licensed by the agency who may have unsupervised contact with children.~~

~~(4) 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.~~

~~(5) Upon request, the Child Advocate shall have access to information contained in the Central Registry in order to fulfill the responsibilities of the Office of the Child Advocate.~~

4.36 : Central Registry Listing~~Registry of Alleged Perpetrators~~

(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.

~~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 maintained pursuant to M.G.L. c. 119, § 51F. 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;~~
- ~~(i) Relationship to victim.~~

4.37 : Access to the Central Registry ~~Listing of Alleged Perpetrators~~

(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;
- (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.

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(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.

~~The name of the alleged perpetrator shall be added to the Registry of Alleged Perpetrators if:~~

- ~~(a) the allegation of child abuse or neglect has been supported and referred to the District Attorney pursuant to M.G.L. c. 119, § 51B(k); and~~
- ~~(b) there is substantial evidence indicating that the alleged perpetrator 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."~~

~~The name of the alleged perpetrator shall remain on the Registry of Alleged Perpetrators for 75 years or until the decision to list the name of the alleged perpetrator is reversed pursuant to 110 CMR 10.00 et seq., or by a court of competent jurisdiction.~~

4.38 : ~~Access to the~~ 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

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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.

~~(1) Department staff may have access to the Registry of Alleged Perpetrators for the purpose of:~~

- ~~(a) screening applicants for employment, including volunteers and student interns, by the Department, or one of its contracted providers, in a position with direct contact with clients or children;~~
- ~~(b) screening applicants to become foster or adoptive parents;~~
- ~~(c) screening a report filed under M.G.L. c.119, § 51A;~~
- ~~(d) conducting an investigation under M.G.L. c.119, § 51B;~~
- ~~(e) assisting in providing appropriate services to any child in the care or custody of the Department;~~
- ~~or~~
- ~~(f) assisting in providing appropriate services to any family having an open case with the Department~~

~~(2) State child welfare agencies of another state may, upon request, receive information from the Registry of Alleged Perpetrators for the purpose of:~~

- ~~(a) determining whether to approve a prospective foster or adoptive parent; or~~
- ~~(b) to carry out the agencies responsibilities under the law to protect children from abuse and neglect.~~

~~(3) Any data subject or duly authorized representative may obtain official confirmation or denial of the fact that the data subject's name appears on the Registry of Alleged Perpetrators and a copy of the information maintained on the Registry of Alleged Perpetrators by making a specific written request to the Fair Hearing-~~

~~Unit, pursuant to this provision, accompanied by sufficient proof of identity. The data subject may direct that the information be provided to another individual, or agency. 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.~~

~~(4) 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, or an order of a court of competent jurisdiction or as authorized by M.G.L. c.119, § 51E and 51F. 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.~~

~~(5) The Department may enter into agreements with other state agencies to permit access to the Registry of Alleged Perpetrators for the purpose of screening applicants for employment, volunteers, interns, foster or adoptive parents or other entities licensed by the agency who may have unsupervised contact with children.~~

~~(6) Upon request, 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.~~

~~(7) Upon a written request to the Fair Hearing Unit, the Department may release aggregate data for research purposes. All identifying information will be removed.~~

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 : ~~To Whom Reported~~ 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

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or will consent to participation in any kind of law enforcement interview or interrogation.

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.

~~All reports of abuse or neglect of children in an institutional setting shall be made to the Department pursuant to the provisions of M.G.L. c. 119, §§ 51A through F.~~

4.41 : How Handled

~~All reports of abuse or neglect of children in an institutional setting shall be handled by the Department in the same manner as all other reports (see 110 CMR 4.20 et seq.) except that the Department's investigator shall also visit the institution in question in connection with the investigation.~~

4.43: Telephone Notice

~~The Department may, in appropriate circumstances, 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) by telephone in an instance where the Department has received and screened in a report alleging that abuse or neglect of a child has occurred at a facility owned, operated, or funded, in whole or in part, by any of said departments or office, or at a facility operated by a person or entity subject to licensure or approval by any of said departments or office. Said telephone notice may be given in appropriate cases where coordination between agencies during the investigation would minimize interviews of and trauma to any child-victim, or would otherwise be beneficial.~~

~~During the Department's investigation process, the Department's investigator may be accompanied by an employee of EEC, DMH, DDS, DPH, or DYS, if said department or office is responsible for the institution in question, and if the Department and said department or office 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.~~

4.45 : Information Sharing

~~(1) After completion of its investigation, the Department shall notify EEC, DESE, DMH, DDS, DPH, or DYS in writing by transmitting to the commissioner or director of that office or department a copy of the report received by the Department under M.G.L. c. 119, § 51A and a copy of the report prepared by the Department under M.G.L. c. 119, § 51B, if:~~

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- ~~(a) the Department has supported said report; and~~
- ~~(b) 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 said departments or office, or at a facility operated by a person or entity subject to licensure or approval by any of said departments or office. In the event that EEC shares with one or more other state department(s) (DMH, DDS, DPH, or DYS) responsibility for licensing, funding or approving a facility as set forth in 110 CMR 4.45(a) and (b), the Department shall always notify EEC and may at the Regional Director's discretion also notify DMH, DPH, DYS, or DDS.~~

~~(2) In any investigation in which the Department has notified EEC, DMH, DMR, DPH, DYS or DESE in accordance with the previous paragraph, the Department shall also notify the OCA in writing by transmitting a copy of the 51A report and 51B investigation report to the Office of the Child Advocate.~~

~~(3) If as a result of any 51A report or 51B investigation, the Department discovers information or circumstances which might 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; that information shall be recorded by the Department's investigator on the 51B form; and~~

- ~~(a) if supported, the 51B form shall be sent to the department or office in question; or~~
- ~~(b) if unsupported, the information regarding poor quality of care or possible licensing violation shall be communicated to the department or office in question.~~

4.46 : ~~Testimony by Department Employees~~

~~Department employees shall be made available to testify at administrative hearings held by EEC, DESE, DMH, DDS, DPH, or DYS in connection with matters reported by the Department to any of said departments or office pursuant to 110 CMR 4.00.~~

4.47 : ~~Follow Up Actions~~

~~After the Department has provided a copy of the 51A/51B report to any department or office pursuant to 110 CMR 4.00, the department or office in question will be responsible for any further action to insure that adequate steps have been or will be taken to prevent reoccurrence of incidents of abuse and/or neglect of children in the institution in question. The Department will maintain the responsibility 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.~~

4.48 : ~~Information Requests from Day Care Facilities, Schools, and Other Child Care Facilities~~

~~Each determination by the Department to "support" or "unsupport" a report of abuse or neglect in an institutional setting shall be communicated to the director or owner of the institution in question, in a form letter established for use by the Department. See, 110 CMR 4.32.~~

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~~If a request for copies of a 51A/51B report, pursuant to M.G.L. c. 119, § 51E, is made to the Department by any owner or operator or director of a day care facility, or any superintendent or director of a public or private school, or any director of any other child care facility (such as group care facilities, etc.) said owner or operator or director of a day care facility or superintendent or director of a public or private school or director of any other child care facility may, subject to the approval of the Commissioner or his/her designee, receive a copy of the 51A/51B report regardless of whether the report has been "supported" or "unsupported", if said report contains an allegation that an incident of abuse or neglect occurred on the premises of the day care facility, school, or other child care facility. However, before copies of the reports are released, the name of the reporter shall be redacted. See, 110 CMR 12.08.~~

4.50 : Reporting to Working with the District Attorney and Law Enforcement-Introduction

(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, ~~is permitted to~~ notify the District Attorney or local law enforcement concerning ~~of~~ other ~~matters involving~~ 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 ~~d~~District ~~a~~Attorney and ~~the~~ local law enforcement when ~~early~~ evidence, ~~either~~ during the Screening Process receipt of the 51A report or ~~during the investigation conducted under the~~ 51B response, indicates ~~d~~ that there is reasonable cause to believe that one of the conditions listed in ~~110 CMR 4.51(2)~~ M.G.L. c. 119, § 51B (k) or below has occurred as a result ~~ed from~~ of abuse or neglect. ~~Notification may include transmitting a copy of the 51A report.~~

(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.

(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. ~~If, after an investigation pursuant to M.G.L. c. 119, § 51B, the Department supports a 51A report, the Area Director shall, no later than five working days after the supported decision is made, mail or deliver a copy of the completed 51A report and a copy of the completed~~

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51B investigation to the District Attorney and the local law enforcement authorities for the county in which the child resides and for the county in which the offense occurred, if:

- (a) a child has died;
- (b) a child has been sexually assaulted;
- (c) a child has suffered brain damage, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;
- (d) a child has been sexually exploited;
- (e) a child has suffered serious physical abuse or 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.

(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. ~~If a report is either screened out, or unsupported, on the basis that the alleged perpetrator did not meet the definition of caretaker, but the allegations fall within one of the categories under M.G.L. c. 119, § 51B(k), as listed in 110 CMR 4.51(2), the Area Director shall, no later than five working days after the screen out, or unsupport, decision, mail or deliver a copy of the completed 51A report and the completed 51B report, if applicable, to the District Attorney, and the local law enforcement authorities, for the county where the child resides and for the county in which the offense occurred.~~

(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 ~~ing possible~~ 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(23), or pose a serious threat to public safety generally. ~~to the District Attorney for investigation, regardless of whether the 51A report is supported or unsupported by the Department. Decisions as to which matters to refer to a District Attorney as a discretionary report shall be made by the Area Director. Such referral shall be accomplished by mailing or delivering to the District Attorney for the county in which the child resides a copy of the completed 51A report and the completed 51B investigation.~~

(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 ~~has been made to~~ a District Attorney, ~~a social worker or other the Department employee may provide documentation or discuss with the District Attorney any information obtained by the social worker Department in connection with the 51A report or 51B response with the District Attorney. investigation. Further documents (other than the completed 51A report and 51B investigation already furnished to the District Attorney) from the Department's files shall be released to the District Attorney upon request, if the Commissioner or his/her designee determines that such documents are directly relevant to the investigation or prosecution of the matter referred to the District Attorney, and that release would not be contrary to the best interests of the child(ren) in question.~~

(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) ~~After a mandatory or discretionary referral to a District Attorney, the Regional Director shall advise the~~

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family that their case has been referred to the District Attorney, unless within six working days after the Regional Director notifies the District Attorney, the District Attorney, in writing, requests that such notification not occur. 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 provided to a District Attorney in accordance with 110 CMR 4.00, which are thereafter subpoenaed from the District Attorney or otherwise requested from the District Attorney by any party to any pending criminal matter, shall be released or not released by the District Attorney solely in accordance with the applicable rules or procedures governing the District Attorney, and no notice to or consent from the Department shall be required.~~

~~(4)~~ (3) Any documents from the Department files which are subpoenaed directly from the Department by any party to for a criminal matter to which the Department is not a party, is are governed by judicial determinations as set forth in the procedures ~~set out~~ 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 through 51F and M.G.L. c. 66A and M.G.L. c. 112, §§ 135 through 135B apply to Department records as applicable, and a specific order is required to produce Department records in a criminal manner.

4.54 : Multi-~~d~~Disciplinary Service Team (MDST)

~~(1) Following each~~ Where a 51A report is referred made to a the District Attorney pursuant to 110 CMR 4.0051: *Mandatory Reporting to the District Attorney* or 110 CMR 4.52: *Discretionary Reporting to the District Attorney*, the Regional Area Director shall, in cooperation with and the District Attorney shall determine whether a review by a MDST would be beneficial. ~~and the Area Director, select the members of a multi-disciplinary team which will be assigned to review the service plan, unless the Regional Director and the District Attorney mutually agree to waive the multi-disciplinary team procedure. The multi-disciplinary service team shall consist of the social worker responsible for servicing the family, a representative of the District Attorney, and at least one other member who is not employed by either the Department or the District Attorney. This other member shall be appointed by the Regional Director and shall have experience and training in the field of child welfare and criminal justice.~~

(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 ~~the multi-disciplinary service team~~ MDST shall have full access to the ~~service plan~~ Department's action plan and any information from the family's ~~social service~~ Department case file which that is directly related to the implementation of the Action Plan. The data shared with ~~the members of the multi-disciplinary team~~ MDST shall be confidential and shall be utilized by the members solely to carry out the responsibilities of the MDST team.

(3) The MDST shall meet on a schedule determined by the Department and the District Attorney's Office, and during such meetings shall: ~~Within 30 working days of the selection of the service team, the service team shall meet:~~

- ~~(a) to discuss~~ Discuss the current status of the child and family and any intervention initiated;
- ~~(b) to discuss~~ Discuss any existing ~~service plan~~ action plan for the family;
- ~~(c) to make~~ Make recommendations as to the advisability of prosecuting any members of the family; ~~and~~
- ~~(d) to discuss~~ Discuss the possible effects of prosecution on the child and attempt to

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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) Within 55 working days of the referral of any case to the District Attorney, the Regional Director will forward a copy of the Department's service plan for the child and family to the District Attorney. The MDST may notify the District Attorney when a family has failed to participate or cooperate in the action plan.~~

~~(5) If the multi-disciplinary service team finds that the service(s) identified in the service plan is/are not being provided due to unavailability, the team shall refer the case to the Commissioner.~~

~~(6) The multi-disciplinary service team may notify the District Attorney when a family has failed to participate or cooperate in the service plan.~~

~~(7) The Regional Director, in consultation with the District Attorney, shall determine when the multi-disciplinary team's involvement with a case is no longer warranted, and the Regional Director may thereafter authorize the dissolution of the team.~~

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 In Need of Services (CHINS)~~ 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 ~~CHINS petition~~ case is filed ~~with any court~~, the Department's involvement with the child who is the subject of the CRA begins due to any of the following ~~child may come to the attention of the Department in four different ways:~~

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

4.62 : Court Referral

(1) A probation officer of a court in which a ~~CHINS CRA application was petition has been~~ filed may refer the child or ~~his/her~~ the child's family to the Department for ~~provision of social~~ services by instructing the child or ~~his/her~~ the child's family to contact the Department and apply for services.

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(2) Where a ~~If the~~ child, or the child and ~~his/her~~ the child's parent(s), apply for Department services, as a result of a court referral, the ~~application~~ Department shall ~~be treated~~ treat the application in the same manner as a voluntary application for services, (110 CMR 4.01 through 4.11).

(3) ~~A~~ The Department shall assess a referred child to determine if the child ~~who reasonably appears to~~ has mental health issues ~~be mentally ill~~ 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. ~~No Department employee shall make such an application. Upon such determination, the Department shall immediately inform the~~ The referring probation officer ~~of shall be informed immediately by the Department that in~~ the Department's opinion ~~that~~ the referred child is mentally ill and ~~that~~ without hospitalization serious harm is likely.

(4) If any child is referred to the Department for services under circumstances which indicate ~~that~~ the child may ~~to be~~ in need of care and protection, the Department shall hold a case conference ~~shall be held to~~ 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~~ordered Pre-trial Detention~~

(1) If a court finds ~~that~~ 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, ~~be in need of services is not likely to appear at the trial of the CHINS petition;~~ the court may ~~set bail~~ 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: ~~or other terms and conditions for the child's release, or may order the Department to secure the child in lieu of bail and to hold the child in pre-trial detention.~~

(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) Detention is a period of custodial deprivation of liberty between the issuance of a CHINS petition and the trial on the merits. The only legally permissible purpose of detention is to secure the presence of the child at trial.~~

(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) Court ordered detained children shall be placed by the Department in a setting which, consistent with humane practice and the requirements of law, reasonably appears to be able to ensure the child's availability on the trial date. Such children shall be placed in the least restrictive setting possible, including placement in the child's own home.~~

(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 ~~(No Custody to Department)~~

~~(1) Following a trial on a CHINS petition, if the court finds that the allegations have been proved beyond a reasonable doubt, it may adjudicate the child in need of services.~~

(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.

~~Once the child has been adjudicated, the court may order provision of specified services (without committing the child to the custody of the Department):-~~

~~(2) The Department may provide such court prescribed services if the services are available, and the Department determines in its clinical judgment that the services are appropriate for the child and her/his family, and to the extent the Department is reasonably able to comply.~~

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(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) A child receiving court prescribed services (but not in the court ordered custody of the Department) who reasonably appears to be mentally ill and in danger of serious harm if not hospitalized should be the subject of an application for a commitment hearing before a district court under M.G.L. c. 123, § 12. No Department employee shall make such an application. A probation officer or other employee of the Court which ordered the provision of services shall be informed immediately by the Department that in the Department's opinion the child is mentally ill and that without hospitalization serious harm is likely.~~

(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.

~~(4) If the court orders the Department to provide particular services or treatment, the Department shall carefully review the order. The Department may only be ordered to provide those services that it is legally required to provide. (Charrier v. Charrier, 416 Mass. 105 (1993)) Until such time as a court's order is vacated, changed or dismissed, the court's order shall nevertheless be complied with, if the services are available and to the extent the Department is reasonably able to comply but at the same time the Department's legal counsel shall be contacted, so that an appeal may be considered.~~

4.65 : Court-Ordered Post-Hearing Custody to Department Commitment (Custody to Department)

(1) After a ~~trial~~ fact-finding hearing on a ~~CHINS~~ CRA petition, a child may be adjudicated to be in need of ~~services~~ assistance. Pursuant to M.G.L. c. 119, §29C, ~~the~~ The court may ~~then commit~~ place the child ~~into~~ the custody of the Department for a period of 120 days ~~up to six months~~ 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 ~~commitment order~~ dispositional order, the child shall be considered to be in the temporary custody of the Department.

~~(3) A child committed to the temporary custody of the Department shall be placed in the home of his/her parents unless substitute care would better serve the child's interests.~~

(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) Children may only be committed to the custody of the Department by a court after a CHINS adjudication has been entered.~~

~~(5) A CHINS child committed to the custody of the Department who reasonably appears to be mentally ill and in danger of serious harm if not hospitalized should be the subject of an application for a commitment hearing before a district court under M.G.L. c. 123, § 12. Department social workers, after consultation with a member of the Department's legal staff, shall be responsible for making such applications.~~

~~(6) If the court orders the Department to provide particular services, treatment or placement, the Department shall carefully review the order. The Department may only be ordered to provide those services that it is required by law to provide. Charrier v. Charrier, 416 Mass 105 (1993). In addition, a court in a CHINS matter may recommend out of home placement of a child. If such placement is recommended the Department may not refuse the out of home placement, but the Department shall direct the type and length of the out of home placement. The Department shall also give consideration to a request of the child that s/he 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. Until such time as the order is vacated, changed or dismissed the court's order shall nevertheless be complied with, to the extent the services are available and to the extent the Department is reasonably able to comply but at the same time the Department's legal counsel shall be contacted, so that an appeal may be considered.~~

(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

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comply.

~~(7) After any order committing a child to the custody of the Department after a CHINS adjudication, the Department shall complete a service plan in accordance with 110 CMR 6.00.~~

(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.

~~(8) When preparing the service plan, the Department's social worker shall involve other interested persons such as relatives, friends, or community agencies who may be willing to provide helpful services.~~

(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.

~~(9) Where a child's service 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 has reason to believe that 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 110 CMR 7.400.~~

(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 CHINS CRA Court Proceedings

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

Commentary

~~Traditionally, Department attorneys have not appeared at any pre-adjudication CHINS court proceedings because technically the Department is not a party to such actions. However, recognizing that some pre-adjudication CHINS matters present difficult or complex legal problems for the social work staff, the Department will make members of the legal staff available on an as-needed basis.~~

4.70 : Eligibility for Single Service Cases

~~A family receives a single service when the family is assessed to need only one service purchased in whole or in part by the Department. A single service is provided when, in the judgment of the Department, the service is needed to maintain or support the family, and comprehensive case management is not needed.~~

~~Limitation upon hours of service and duration of service are set forth in each service specific chapter of 110 CMR.~~

~~Any person located within the Commonwealth may request social services from the Department. Persons requesting social services must complete a written application form. Persons needing assistance in completing the written application form shall be furnished with assistance by the Department.~~

Commentary

~~The Department frequently receives requests for services from persons who, while physically located within the Commonwealth, might be classified as "transients" or "temporary residents". Examples include families who have stopped in Massachusetts while moving from Florida to Maine and who are living with relatives, families who are temporarily residing at the Ronald McDonald House while their child receives specialized care at Children's Hospital, etc. The Department will not exclude such families from eligibility for Department services on the basis of these residency characterizations. Instead, the Department will accept applications from any person who has a bona fide physical location within Massachusetts, and the Department will thereafter proceed to review and assess the application in accordance with 110 CMR 4.70 through 4.76.~~

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.71 : ~~Case Management~~

~~Requests for a single service, and case management of single service cases, shall be in accordance with the applicable chapters of 110 CMR 4.00, including: 110 CMR 4.00: Intake; 110 CMR 5.00: Assessment; 110 CMR 6.00: Service Plans and Case Reviews; and 110 CMR 7.000: Services.~~

~~In particular, the need for single service provision shall be reviewed every six months, in conjunction with review of the service plan.~~

4.72 : ~~Application Information Required~~

~~Any client seeking a single service shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for a single service. In addition, an individual applying for a single service may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for a single service.~~

4.73 : ~~Limited Assessment for Single Service Cases~~

~~Single service cases shall require a limited assessment only. See, 110 CMR 5.00 (Assessment). The limited assessment shall determine the applicant's need for the single service and whether the service is appropriate.~~

4.74 : ~~Delivery of Service~~

~~After completion of the limited assessment, if the applicant is determined to need the single service and if the single service is determined to be appropriate, the Department shall provide the single service, or authorize provision of the single service, within ten working days of completion of the limited assessment. If no Department (or provider) service resources are currently available, the applicant shall be placed on a waiting list.~~

4.75 : ~~Sliding Fee~~

~~All single services may be subject to a sliding fee.~~

4.76 : ~~Denial, Reduction, or Termination of Services~~

~~Any client aggrieved by the denial, reduction, or termination of a single service may request a fair hearing on the matter pursuant to 110 CMR 10.00 et seq.~~

~~All Department clients who receive a single service (such as chore, homemaker, respite, etc.) shall, upon attaining 60 years of age, be transferred to the Department of Elder Affairs. The transfer of a client's case, at 60 years of age, to the Department of Elder Affairs is not appealable.~~

REGULATORY AUTHORITY

- 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.