4.01: Requests for Services

(1) 110 CMR 4.01 through 4.15 apply to a request for voluntary services from the Department.

(2) Any person located within the Commonwealth may request services from the Department. Persons requesting 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.

4.02: Review of Application

(1) When the Department receives a written application for services, it shall first review the application to determine:

(a) the nature of the service(s) requested;

(b) whether the service(s) requested lie within the mandate of the Department, and

(c) whether services are needed on an emergency basis.

4.03: Response Time for Application

(1) If after review it is determined that the 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 a family assessment, and if found eligible, develop an action plan with the family in accordance with 110 CMR 5.00: Family Assessment and Action Plan.. The family assessment and initial action plan shall be completed within 60 working days after receipt of the application by the Department.

(2) If after review it is determined that the 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 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.

4.04: Eligibility to Receive Services

 As part of the family assessment or evaluation process (as well as during each update to the family assessment - see 110 CMR 5.00), the Department shall determine an applicant's eligibility to receive services. The Department shall make this determination on the basis of whether the applicant is in need of the 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.

4.05: Decision to Provide Services to Eligible Applicants

(1) The decision to provide voluntarily requested services to eligible applicants shall take into consideration:

(a) the availability of the service(s);

(b) the client's willingness to pay all or a portion of the cost of the service(s), according to a sliding fee scale established by the Department, unless the service(s) in question is/are not subject to sliding fee; and

(c) the Department’s budget appropriation.

(2) If no Department (or provider) service resources are currently available, the eligible applicant shall be placed on a waiting list.

(3) If an eligible applicant has an assessed ability to pay the entire cost of the service, the applicant shall be provided information and referral services only, unless the service in question is exempted from the sliding fee requirement.

Commentary

M.G.L. c. 18B, s. 4 states that "subject to appropriation, services of the Department shall not be denied to any 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.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. s. 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 services, and the consideration of assets and income in the Department's decision to provide 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.

4.06: Notification of Eligibility

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

4.07: Redetermination of Eligibility

 (1) The Department shall redetermine each recipient's eligibility for services at the following times in connection with the family assessment and action plan update.:

(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 the 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.

4.08: Sliding Fee for Services

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

 Information and referral services.

4.08A: Fees for Voluntary Substitute Care Services

(1) The Department may 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 SI 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:

1. 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.
2. 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.
3. 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.
4. 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.

(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:

1. that the imposition of the fee would create an extreme financial hardship or/and;
2. 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. The 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 the Department 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 13 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 (1) $93.75, an amount equal to 25% of the child's SSI benefit, and (2) $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:

1. 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;
2. The family wants to dispute the computation of the fee or the termination of the service due to non-payment; or
3. 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 Non-voluntary Substitute Care Services

(1) The Department may assess a fee when non-voluntary 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.

(2) If a family fails to pay the assessed fee for non-voluntary 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 S.S.I./Soc. Sec./VA/Other Benefits

(1) The Department will require parents of children entitled to S.S.I./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.

(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 S.S.I./Soc. Sec./or other payment, which is then supplemented by the Department, up to the full amount of the child's adoption or guardianship subsidy.

**4.10: Voluntary 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. For young adults continuing in care after age 18 or returning to care after age 18, the young adult signs the Voluntary Placement Agreement.

**4.11: Voluntary Placement Agreements - Form**

 The Department shall utilize a standard form of Voluntary Placement Agreement, as established by the Department. This Voluntary Placement Agreement will be effective for six months, and must be re-executed or extended for additional 6 month periods. All Voluntary Placement Agreements shall be approved by a Departmental Area Director or designee and signed by at least one parent and Department Social Worker. 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 parent/young adult and the Department. The Department may utilize a different standard form for young adults which can be signed before the age of 18 to become effective upon the young adult’s 18th birthday. The Voluntary Placement Agreement for young adults will be effective for 12 months and may be re-executed or extended for additional 12 month periods.

**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) For Voluntary Placement Agreements for Young Adults, the young adult may terminate the Voluntary Placement Agreement by giving the Department 3 business days notice. The Department must give a young adult written notice at least 30 days prior to terminating a Voluntary Placement Agreement, along with notice of the young adult’s right to contest the termination of the agreement through the Fair Hearing Process. If the young adult requests a fair hearing, the voluntary placement may not be terminated until at least 14 days following the fair hearing if the termination is upheld.

**4.13: Voluntary Placement Agreements - Mature Child**

 The Department may accept a Voluntary Placement Agreement from a mature child under age 18, 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) retains the right to determine if their child will be available for an interview unless the child is a mature 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(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, child 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(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(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.

(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 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 action plan.

(c) If services are declined, the social worker shall record inthe electronic 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.

23) All surrenders shall be taken in conformity with M.G.L. c. 210, s. 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. Under the Indian Child Welfare Act, an adoption surrender of an Indian child must be taken in front of a Judge.

**4.16: Safe Haven**

(1) A parent is permitted to voluntarily place their new born child under 7 days old with a hospital, police department or manned fire department, herein after “Safe Haven Facility”. *See M.G.L. c. 119, § 13 ½.*

(2) When a parent leaves a child at a Safe Haven Facility, the facility will contact the Department who shall immediately arrange for placement of the child under M.G.L. c. 119, § 23(a)(5).

(3) If the parent’s identity is known, the Department may explore with the parent entering into a Voluntary Placement Agreement or an Adoption Surrender.

(4) If the parent has not identified themselves to the Safe Haven Facility, or is unwilling to sign a Voluntary Placement Agreement or Adoption Surrender, the Department shall file for custody no later than 5 working days following notice from the Safe Haven Facility.

**4.20: Receipt of Reports of Alleged Abuse or Neglect - Reporting Process**

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

(2) During Evenings, Weekends, and Holidays. To report known or suspected abuse or neglect of children, telephone calls by mandated and non-mandated reporters should be directed to the statewide Child-At-Risk-Hotline (1-800-792-5200).

(3) 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 to respond to reports of 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. . 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 does not involve a child or is not child abuse or neglect. The Department shall record the call, screen it out, and if applicable, indicate it is an invalid allegation If appropriate the Department may provide information and referral services. *See*, 110 CMR 3.00. The Department shall 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.

(4) Documentation of Information. For any calls received which report child abuse or child neglect, the Department or Hotline employee shall enter the information into an electronic case record maintained by the Department. The information entered into the electronic record will be printable onto a "51A" standard report form, as established by the Department.

(5) 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 be recorded for later use by the Department. 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, s. 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 begin activities to determine if the report falls under the Department’s mandate or requires a Department response. These activities shall be referred to as screening a report and are conducted under MGL c. 119, § 51B. . The purpose of screening is to identify children at risk of abuse or neglect from a caregiver or at risk of sexual exploitation or human trafficking, determine the Department’s response, which may be to screen out, or proceed to a response 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. 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.

The Department will utilize one of the 15 working days permitted for the response under MGL c. 119, § 51B to make its screening decision unless an additional day is needed to obtain a specific piece of information from a collateral to make the screening decision for the reasons specified in the Department’s Protective Intake Policy, but will immediately determine if an emergency response is needed.

A. Screen Out:

 The Department may screen out a report when:

(a) there is no reasonable cause to believe that a child is or has been abused or neglected;

 (b) the identified alleged perpetrator is not a caregiver, except if the report involves a child who may have been sexually exploited or a victim of human trafficking (but the Department shall not screen out reports on the sole basis that no alleged perpetrator is identified or that the perpetrator is unknown);

(c) the incident or condition reported by the caller is old and there are no children who might be at risk for abuse or neglect ;

(d) the report is demonstrably unreliable or a counterproductive multiple report.

Commentary

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

(1) The "caregiver" 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: "`[C]hild 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 response process was created to address. The criminal justice system remains primarily responsible for the investigation of such acts.

 Thus, if the Department receives a report where the alleged perpetrator is identified and is clearly a non- caregiver, the Department shall screen out such a report, unless it involves a child who may have been sexually exploited or a victim of human trafficking, in which case the Department may investigate the allegations. 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(k). 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 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 responded to and found to be without merit.) 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 designee, who shall make the final decision.

Reliable but repetitive reports may be "screened out" by the Department or combined into the same response:

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. In this case both reports would result in one response.

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. In this situation, if there is not additional information, the subsequent reports would be screened out because they involve an incident that has already received a response.

 Duplicate responses 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 designee.

**4.22: Screening Activities**

 A. Record Checks and Collateral Contacts

During the screening process the Department:

1. Will check, and if available review, the Department files and the Central Registry to determine any past or present involvement with the Department of any family member in the report;
2. Will consult with the reporter;
3. Will consult with the Department social worker if the family is currently involved with the Department;
4. Will conduct a check of the Criminal Offender Registry Information (CORI), the national crime database and the Sex Offender Registry Information (SORI) systems on the child(ren)’s parent(s); persons age 15 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;
5. Will request records from another state child welfare agency if aware of prior family involvement;
6. Will contact local law enforcement for activity to the home;
7. Will make collateral contacts that may provide information about the allegations that would assist the apartment in its screening decision;
8. May utilize other search tools if needed to gather information, identify the caregivers and to inform the screening decision; and
9. May complete other activities as required by the Department’s Protective Intake Policy.

1. 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 household 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/parent substitute living out of the home.

1. Documentation of Screening Activities

All activities conducted during the screening process shall be documented on a form established by the Department, which may be electronic or paper copy.

1. Entry in the Central Registry

Information from each 51A report (whether or not "screened out") shall be entered into the Department's Central Registry.

1. Notification to Mandated Reporters of Screen Out Decision

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

1. Notification to the District Attorney and Local Law Enforcement

At any point in the screening process, if the Department determines that the report involves a crime that requires a mandatory referral to the District Attorney and local law enforcement, the Department shall immediately make such notification in accordance with 110 CMR 4.51

1. Frivolous Reports

If the Department determines during the screening process that the 51A report is frivolous, or otherwise invalid the Department shall indicate in the intake. The Department shall not maintained in the central registry or any other computerized systems utilized by the Department the information about the child, family, allegations and other information gathered about the report

**4.23: Screening - Emergency and Non-Emergency Responses**

 (1) If the Department 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 Department shall designate the report an "emergency report" and cause the matter to be assigned for an immediate response as provided hereafter in 110 CMR 4.24

(2) If the Department 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 Department shall designate the report a "non-emergency report" and cause the matter to be assigned for an response as provided hereafter in 110 CMR 4.25.

**4.24: Response to 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 reported child(ren) is visited a minimum of one time within 2 hours after receipt of the report and all other child(ren) 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 receipt of the report, the home is visited. The response worker 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 response 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 law enforcement and ask the local law enforcement to verify the allegations (e.g., abandonment, intoxicated caregiver, violent domestic dispute that is endangering the child) 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 a response worker from viewing a child(ren) who is the subject of the report or from determining the name, age or condition of other child(ren) in the same household that the response worker has determined should be viewed, the response worker shall, if the response worker 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 response worker 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 response worker may use the 24-hour Judicial Hotline to obtain judicial assistance, with the approval of the supervisor. If the response worker remains unable to view the child, the supervisor will make the response decision based on an evaluation of the nature and contents of the 51A report and any collateral information.

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

(a) determine that the child's condition presents an emergency, in which case the response of the emergency report shall be completed as soon as possible and in no event later than five working days after the report is received. The response shall be conducted in the same manner as responses of non-emergency reports (set forth in 110 CMR 4.25).

**4.25: Response to Non-Emergency Reports**

 (1) The response 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 receipt of the report. (See 110 CMR 4.25(3) for procedures when an individual or family refuses to permit a viewing of the child.) The response worker 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 child care facility and if the child is viewed at the child care facility). The response shall include a determination of the name, age, and condition of other child(ren) in the same household. The Department will ensure that the response includes the linguistic capacity and cultural knowledge needed to perform a fair and comprehensive response of the reported child(ren) and family.

(2) The response shall include:

* 1. interviewing the reporter;
	2. checking and reviewing Department files and the Central Registry;
	3. if not completed during screening, conducting CORI, SORI, and national history criminal database checks on:
		1. any caregiver alleged to be responsible for the abuse or neglect;
		2. the parent(s) of the reported child(ren);
		3. any other person age 15 or older who is a member of the reported child(ren)’s household or is otherwise connected to the response,
	4. contacting local law enforcement for activity to the home, if not completed during screening;
	5. requesting records from another state child welfare agency if aware of prior family involvement, and if not requested during screening;
	6. utilizing other search tools, if needed, to gather information to inform the response decision;
	7. arranging medical examination(s) where appropriate;
	8. making any collateral contacts necessary to obtain reliable information which would corroborate or disprove the reported incident and the child's 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;
	9. visiting and interviewing the parents and other individuals living in the home a minimum of one time, the initial visit occurs in the home within three working days after the receipt of the report. 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 response worker and supervisor;
	10. interviewing the person alleged to be responsible for the incidents of abuse or neglect. The Department will consult with the District Attorney or law enforcement in situations where the DA or law enforcement is investigating the same situation. If the person alleged to be responsible for the abuse or neglect has been arrested, the Department will not interview the person unless the person’s criminal attorney has granted permission. *See* Commonwealth v. Howard, 446 Mass 563 (2006); and
	11. other activities as required by the Department’s Protective Intake Policy.

 (3) If an individual or family prevents the response worker 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 response worker has determined should be viewed, the response worker shall, if the response worker 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 manager and a member of the legal staff to determine what legal action may be warranted. If the response worker 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 Department may choose to waive a home visit if it is able to view the child in some other location. If the response worker remains unable to view the child, the supervisor will make the response 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 response worker 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 caregiver(s), the response worker shall deliver to the individual a statement of rights which shall include written notice that a 51A report has been made, the nature and possible effects of the response, 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 response, the Department shall determine:

(a) the existence, nature, extent and cause or causes of the alleged abuse or neglect or 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, age 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.

**4.26: Screening and Response to Reports Involving Department Employees, Department Employee’s 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 Central Office Special Investigations Unit for screening and/or response.

 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 taken by the area where the home is located and thereafter be referred to the Central Office Special Investigation Unit, for screening and response.. The Central Office Special Investigations Unit shall also respond to any other 51A report at the request of the Commissioner.

**4.27: Emergency Removal**

 (1) Emergency removal pursuant to M.G.L. c. 119, §, 51B(c) is an extreme measure requiring dire circumstances. Before arriving at a decision to effect an emergency removal, the Department shall consider the harm to the child that 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 finds reasonable cause to believe:

(a) that a condition of serious abuse or neglect (including abandonment) exists, and

(b) that, as a result of that condition, removal of the child is necessary in order to avoid the risk of death or serious physical injury to the child, and

(c) that the nature of the emergency is such that there is inadequate time to seek a court order for removal.

(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 reviewed by the Supervisor, and shall thereafter be filed in court together with a petition pursuant to M.G.L. c. 119, § 24.

**4.28: Assignment of Second or Subsequent Reports for Response**

 In the event that a second or subsequent report is received and screened in involving the same child(ren) or caregiver during an open response, the same worker will be assigned and the response will be incorporated into the currently open response, unless the Area Director/Designee determines a different worker should be assigned due to the timing of the subsequent report or the nature of the subsequent report..

**4.29: Time Frames for Completion of Response**

(1) The response to all "emergency reports" shall commence within two hours of receipt of the report by the Department and shall be completed within five working days. The results of the response shall be in writing, transcribed onto a "51B" standard response form, as established by the Department, which may be electronic.

(2) The response to all "non-emergency reports" shall commence within two working days of receipt of the report by the Department and shall be completed within 15 working days, unless extended in accordance with the Department’s Protective Intake Policy. . The results of the response shall be in writing, transcribed onto a "51B" standard response form, as established by the Department, which may be electronic.

**4.30: Response Decision**

(1) After completion of its 51B response , the Department shall make a determination as to whether the allegations in the report should be found to be "supported" ,” substantiated concern” or "unsupported".

(2) To support a report means that

1. the Department has reasonable cause to believe that a child was abused or neglected (reported or discovered during the response). “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; and
2. the actions or inactions of the parent or a caregiver place the child in danger or pose substantial risk to the child’s safety or well-being or the person responsible for the abuse or neglect was responsible for the child being a victim of sexual exploitation or human trafficking. To support a report does not mean that the Department has made any finding with regard to the identity of the perpetrator(s) of the reported incident or abuse or neglect. It simply means that there is reasonable cause to believe that some caregiver (or other person for victims of sexual exploration or human trafficking) did inflict abuse or neglect upon the child in question.

 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) Substantiaed Concern means that:

1. The Department has reasonable cause to believe that the child was neglected; and
2. The actions or inactions by the parent(s) or caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child’s safety or well-being.

(3) Unsupport means that:

1. There is not reasonable cause to believe that a child(ren) was abused or neglected; or
2. The person believed to be responsible for the abuse or neglect was not a caregiver, except in situations involving sexual exploitation or human trafficking, the report will not be unsupported simply because the person responsible was not a caregiver.

**4.31: Response Notifications**

1. Unsupported: Each determination by the Department that the allegations of a 51A report are “unsupported” shall be communicated on a form letter established by the Department to:
	1. The parent(s) or caregiver(s), or, in the event 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.
	2. All collaterals who were contacted by the response worker, shall be notified in writing of the decision to unsupport the report, if the target of the response requests that such notification not occur.
	3. The mandated reporter.
	4. The director or owner of a facility 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 4.42, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.42.
	5. Other state agencies and the OCA where required by 110 CMR 4.44 or a Memorandum of Understanding between the Department and that agency or the OCA.

(2) Supported or Substantiated Concern: Each determination by the Department that the allegations or a 51A report are “supported” or there is a “substantiated concern” shall be communicated on a form letter established by the Department to:

1. The parent(s) or caregiver(s) or, in the event 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 or there is a substantiated concern, except when there is a referral to the District Attorney, see 110 CMR 4.50.
2. A person named to the registry of alleged perpetrators, unless the District Attorney requests that the notification be delayed for 20 days. The notification shall include notice that his/her name will be maintained on the Registry of Alleged Perpetrators and the right to a fair hearing to appeal the listing. If the alleged perpetrator is a child under the age of 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 the fair hearing proceedings at request of the District Attorney)
3. 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 service(s), if any, that the Department intends to provide to the child and/or the child’s family.
4. The director or owner of a facility 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 4.42, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.42.
5. District Attorney and local law enforcement, where required by 110 CMR 4.51; and
6. Other state agencies and the OCA where required by 110 CMR 4.44 or a Memorandum of Understanding between the Department and that agency or OCA.

**4.32: Central Registry Listing of Alleged Perpetrator**

(1) Alleged Perpetrator: Whenever the Department "supports" a 51A report and makes a determination that the actions or inactions of the parent or a caregiver place the child in danger or pose substantial risk to the child’s safety or well-being or the person responsible for the abuse or neglect was responsible for the child being a victim of sexual exploitation or human trafficking, the name of the parent/caregiver or the person responsible for the victimization of sexual exploitation or human trafficking will be listed in the Department’s central registry as an alleged perpetrator

(2) Registry of Alleged Perpetrator: If In addition, if 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, the alleged perpetrator’s name will also be listed on the Registry of Alleged Perpetrators. See 110 CMR 4.35.

 (3) Substantiated Concern: Whenever the Department’s determines a report results in a finding of a “substantiated concern”, the Department will not identify an alleged perpetrator in the Central Registry.

(4) No Perpetrator: Whenever the Department "unsupports" the report, no alleged perpetrator’s name is placed in the central registry. . (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 caregivers and non-caregivers.

 The caregiver 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 burns around his lips and nose. It is screened in and responded to. The investigator Department 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 occurred. 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 found substantiated concern or supported the report for 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 caregiver, the Department will support the report, if the Department determines it has reasonable cause to believe the reported incident(s) occurred. The Department will also refer the matter to the District Attorney, in which situation the name will be placed in the Registry of Alleged Perpetrator’s (*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 a response, the Department determines that the perpetrator is the girl's 16 year old boyfriend. Since he is not a caregiver, 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 caregivers had cared for the child recently. In this circumstance, mother and father are both listed as alleged perpetrators on the Department's records, and the Department will support the report.. 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 respond to 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 caregiver(s), and there was no neglect by his caregivers Note that the Department will offer voluntary services as appropriate.

4.34: Department's Custodial Powers - Miscellaneous

 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:

(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 interest 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: From time to time 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.

4.33: Access to the Central Registry

(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 G.L. c. 119, § 51A;

(d) conducting a response under 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 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 G.L. c. 119, § 51F.

(5) 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.

4.34: Registry of Alleged Perpetrators

 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.

4.35: Listing of Alleged Perpetrators

 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.

4.36: Access to the Registry of Alleged Perpetrators

(1) The 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 a response under M.G.L. c. 119, § 51B;

(e) assisting in providing appropriate services in 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 or 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, 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) 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).

(6) Upon a written request, the Department may release aggregate data for research purposes. All identifying information will be removed.

4.40: Reports Involving Institutional Settings

 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 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 as set forth in the Department’s policy governing responses to institutional settings, and that the Department's response worker shall also visit the institution in question in connection with the response.

4.42: 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 response would minimize interviews of and trauma to any child-victim, or would otherwise be beneficial.

4.43: Accompaniment of Department Response Worker

 During the Department's response process, the Department's response worker may be accompanied by an employee of EEC, DESE, 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.

4.4: Information Sharing

(1) After completion of its response, 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:

(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 4.44(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 response 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 list of the 51A report and 51B responses to the OCA who may review the report in the Department’s electronic case record.

 (3) If as a result of any 51A report or 51B response, 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 response worker on the 51B form; and

(a) the information regarding poor quality of care or possible licensing violation shall be immediately communicated to the department in question; and

(b) if supported or a substantiated concern, the 51B form shall be sent to the department in question.

(4) If the Department supports a report of child abuse or neglect on an individual who is employed at a facility approved or licensed by EEC, the Department shall notify EEC and the OCA and provide a copy of or access to the written or documented report filed under 51A and the response conducted under 51B.

(5) If as a result of a fair hearing, the decision of the department is reversed, the Department will notify any agency or the OCA who received a 51B investigation by transmitting a copy of the fair hearing decision reversing the support decision.

4.45: 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 pursuant to 110 CMR 4.00.

4.46: Follow-Up Actions

 After the Department has provided a copy of the 51A/51B report to any department 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.

4.47: Information Requests from Child Care Facilities, Schools, and CommunityConnected Residential 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 4.31.

 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 child care facility, or any superintendent or director of a 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 of a child care facility or superintendent or director of a public or private school or director of any community connected residential 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 child care facility, school, or community connected residential facility. However, before copies or the reports are released, the name or the reporter shall be redacted. *See*, 110 CMR 12.08.

4.50: Introduction to Reporting to the District Attorney and Law Enforcement

 M.G.L. c. 119, §§. 51B(k) requires the Department to notify and provide information to the appropriate District Attorney and local law enforcement concerning certain enumerated conditions caused by child abuse or neglect. The Department is permitted to notify the District Attorney of other matters involving possible criminal conduct.

4.51: Mandatory Reporting to the District Attorney

(1) The Department shall immediately notify the District Attorney and the local law enforcement when early evidence, either during the receipt of the 51A report or during the response conducted under 51B indicates that there is reasonable cause to believe that one of the conditions listed in 110 CMR 4.51(3) and M.G.L. c. 119, § 51B(k) resulted from abuse or neglect include transmitting a copy of the 51A report.

(2). The Department encourages and supports coordination of responses between the Department, law enforcement and prosecutors in cases referred to the District Attorney and/or law enforcement in order to minimize the impact of any response/investigation activity on any child victim and to reduce the risk of loss or destruction of evidence. The Department supports the use of Multi-Disciplinary Service Teams (MDST) 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. The Department may enter into Memorandum of Understanding with any District Attorney’s office for the purpose of developing working protocol to carry out coordinated responses to cases referred to the District Attorney’s Office.

(3) If, after a response 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, unless previously provided, and a copy of the completed 51B investigation to the District Attorney and local law enforcement for the county in which the child resides and for the county in which the offense occurred, if the Department determines that as a result of child abuse or neglect:

1. a child has died;
2. a child has been sexually assaulted, which includes crimes under MGL265, §§ 13B, 13H, 22, 22A,23,24,24B and MGL.c. 272, § 35A;
3. a child has suffered brain damage, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;
4. a child has been sexually exploited or a victim of human trafficking;
5. a child has suffered serious physical abuse or or sexual abuse or an injury that includes, but is not limited to:
6. a fracture of any bone, severe burn, impairment of any organ, or any other serious injury;
7. an injury requiring the child to be placed on life-support systems;
8. any other disclosure of physical abuse involving physical evidence which may be destroyed;
9. any current disclosure by the child of sexual assault; or
10. the presence of physical evidence of sexual assault.

(4) If a report is either screened out, or unsupported, on the basis that the alleged perpetrator did not meet the definition of caregiver, but the allegations fall within one of the categories under M.G.L. c. 119. s. 51B(k), as listed above in 110 CMR 4.51(3). the Area Director/designee shall, no later than five working days after the screen out or unsupport, decision, mail or deliver a copy of the completed 51A report, unless previously provided, 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.

4.52: Discretionary Reporting to the District Attorney

The Department may refer other matters involving possible criminal conduct that impact the safety of children (including but not limited to cases of abuse or neglect resulting in conditions other than those listed in 110 CMR 4.51(3)) 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.

4.53: Procedures

 (1) After a mandatory or discretionary referral has been made to a District Attorney, a social worker or other Department employee may discuss with the District Attorney any information obtained by the social worker in connection with the 51A report or 51B 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.

(2) After a mandatory or discretionary referral to a District Attorney, the Area Director/designee shall advise the family that their case has been referred to the District Attorney, unless the District Attorney requests that such notification not occur.

(3) Any documents provided to a District Attorney in accordance with this chapter of these Regulations, 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) Any documents from Department files which are subpoenaed directly from the Department for a criminal matter to which the Department is not a party, is governed by the procedures set out in *Commonwealth v. Dwyer,* 448 Mass. 122 (2006). 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, and a specific order is required to produce Department records in a criminal matter.

4.54: Multi-disciplinary Service Team

 (1) The Area Director with the applicable District Attorney shall determine which of the reports referred to the District Attorney pursuant to 110 CMR 4.00, will be reviewed by a multi-disciplinary service team. More than one team may be developed based on the nature of the reports referred or a protocol developed between the Department and the District Attorney. The multi-disciplinary service team shall consist of a Department employee 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 Area Director and shall have experience and training in the field of child welfare and criminal justice.

For 51A reports specifically involving a sexually exploited child or a child who is a victim of human trafficking, the multi-disciplinary service team 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 person designed by the police chief, a social service provider, a medical professional, or a mental health professional.

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

(3) The multi-disciplinary service team shall meet on a scheduled determined between the Department and the District Attorney’s office and be provided with a copy of the current action plan, if available:

(a) to discuss the current status of the child and family and any intervention initiated;

(b) to discuss any existing action plan for the family;

(c) to make recommendations as to the advisability of prosecuting any members of the family;

(d) to discuss the possible effects of prosecution on the child and attempt to minimize the possibility of multiple interviews of the child;

(e) explore the possibility of utilizing any existing diversion programs; and

(f) for cases involving sexually exploited or human trafficking child victims, to determine if the child was a victim of sexual exploitation or human trafficking and, if so, to recommend a plan for services which may include shelter or placement, mental health and medical care needs or other services as needed.

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

110 CMR 4.00: INTAKE

Intake for CRA Service

4.60: Scope of 4.60 through 4.67

4.61: General Provisions

4.62: Court Referral

4.63: Court-Ordered Pre-Trial Custody

4.64: Court-Recommended Services (No Custody to Department)

4.65: Court-Ordered Commitment (Custody to Department)

4.67: Department Employees at CRA Court Proceedings

4.60: Scope of 110 CMR 4.60 through 4.67

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

**4.61: General Provisions**

 After an application for a CRA petition is filed with any court, the child may come to the attention of the Department in four different ways:

 (a) court referral;

 (b) court-ordered pre-trial custody;

 (c) court-recommended services; and

 (d) 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 CRA petition has been filed may refer the child or his/her family to a family resource center or the Department for provision of services by instructing the child or his/her family to contact the family resource center or the Department and apply for services.

(2) If the child, or the child and his/her parents, apply for services, the application shall be treated in the same manner as a voluntary application for services.

(3) A referred child 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. The referring probation officer shall be informed immediately by the Department that in the Department's opinion 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 be in need of care and protection, 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-Trial Custody**

(1) If a court finds that a child 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 trial of the CRA petition, the court may release the child with terms and conditions to the custody of the parent(s) or may place the child in the temporary custody of the Department, only if as prior to granting temporary custody the court makes the written certifications and determinations that (1) it is contrary to the welfare of the child to be in the child’s home and (2) 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) Pre-trial custody is valid for only 15 days at which time the child, parent(s) and Department must appear before the court for a hearing on whether the temporary custody order should be continued for another 15 days. No such temporary custody may last longer than 45 days. (3) The Department determines the placement of the child when the child has been placed in the Department’s custody.

**4.64: Court Recommended Services (No Custody to Department)**

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

(2) Once the child has been adjudicated, the court shall convene a conference with the child which includes the child, the child’s parent(s), the child’s attorney, the probation officer, and other persons set forth in MGL c. 119, 39G including a representative from the family resource center 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. (3) The Department may provide any recommended services if the services are available, and the Department determines in its clinical judgment that the services are appropriate for the child and/or her/his family, and to the extent the Department is reasonably able to comply.

 (4) 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 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 Commitment (Custody to Department)**

 (1) After a trial on a CRA petition, a child may be adjudicated to be in need of assistance. The court may then commit the child to the custody of the Department for a period 120 days and may extend the commitment no more than 3 times for 90 days each for a total custody time not to exceed 390 days.

(2) If the court commits the child to the custody of the Department, it must make the written certifications and determinations required by MGL119 § 29C.

(3) Following such a commitment order, the child shall be considered to be in the temporary custody of the Department.

(4) The Department will determine the placement of the child, which may include the home of his/her parents 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 MGL119 § 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 of the child that she/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.

 (6) If the court orders the Department to provide a particular service, 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). The court may not order a particular placement. *Care and Protection of Jeremy*, 419 Mass. 616 (1995) and *Care and Protection of Issac*, 419 Mass. 602 (1995), 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.

 (7) After any order committing a child to 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, as applicable.

(8) When determining the tasks, services and supports in the action 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.

(9) 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 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 24.00.

4.67: Department Employees at CRA Court Proceedings

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

Commentary

 Traditionally, Department attorneys have not appeared at any pre-adjudication CRA court proceedings because technically the Department is not a party to such actions. However, recognizing that some pre-adjudication CRA 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.