

Appeals Court of Massachusetts.

Irina DERESH d/b/a Boston Kennels and Arkady Degtiarov,  
Plaintiffs-Appellants,

v.

Marcia IRWIN and John Irwin, Defendants-Appellees.

No. 2013-P-0450.

June 20, 2013.

On Appeal from a Judgment of the District Court Appellate  
Division

Brief of the Defendants-Appellees, Marcia Irwin and John Irwin

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3  
STATEMENT OF THE CASE..... 4  
STATEMENT OF FACTS..... 4  
ARGUMENT..... 7  
    I.    THE APPELLATE DIVISION OF THE DISTRICT COURT PROPERLY  
          UPHELD THE TRIAL COURT'S AWARD OF DAMAGES ..... 7  
    II.   SUFFICIENT EVIDENCE HAS BEEN PRESENTED REGARDING THE  
          REASONABLENESS OF THE VETERINARY BILLS AT ISSUE ..... 13  
CONCLUSION..... 15

## TABLE OF AUTHORITIES

### Cases

<u>Burgess v. Shampooch Pet Indus.</u> , 35 Kan.App.2d 458 (2006).	11, 13
<u>Casillo v. Worcester Area Transp. Co.</u> , 2001 Mass. App. Div. 113, 116 .....	14
<u>Gillett v. Western Railroad Corporation</u> , 90 Mass. 560 (1864...	10
<u>Kaiser v. United States</u> , 761 F. Supp. 150 (D.D.C. 1991).....	12
<u>Krasnecky v. Meffen</u> , 56 Mass. App. Ct. 419 (2001).....	14
<u>Kurash v. Layton</u> , 251 N.J. Super. 412, 598 A.2d 535 (1991)....	12
<u>Leith v. Frost</u> , 387 Ill.App.3d 430 (2008).....	13
<u>Massachusetts Port Auth. v. Sciaba Constr. Corp.</u> , 54 Mass. App. Ct. 509, 516 (2002) .....	8, 9, 10
<u>Nichols v. Sukaro Kennels</u> , 555 N.W.2d 689 (1996).....	11
<u>Powers v. H.B. Smith Co.</u> , 42 Mass. App. Ct. 657 (1997).....	15
<u>Russell v. City of New Bedford</u> , 74 Mass. App. Ct. 715 (2009)...	9
<u>Trinity Church in the City of Boston v. John Hancock Mut. Life Ins. Co.</u> , 399 Mass. 43, 44-49 (1987) .....	8, 9

### Statutes

G.L. c. 140, § 155.....	4
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## STATEMENT OF THE CASE

Following a June 8, 2011 bench trial in the Newton District Court, the defendants (appellants) were found liable under G.L. c. 140, § 155 for damages caused to the plaintiffs (appellees) when, on February 17, 2007, the defendants' unleashed German Sheppard attacked the plaintiffs' Bichon Frise. The Trial Court awarded the plaintiffs' eight thousand six hundred eight dollars and five cents (\$8,608.05) - the amount of the dog's veterinary bills related to the February 17, 2007 attack - in damages.

The defendants filed an Expedited Appeal. In its June 29, 2012, Decision and Order, the Appellate Division of the District Court affirmed the Trial Court's Judgment. A74. Judgment entered for the plaintiffs on July 30, 2012, and the defendants now raise the following two issues on appeal:

1. Are veterinary bills for injuries suffered by a companion animal, beyond the fair market value of that companion animal, properly included in a damages award where liability for those injuries has been established against a party?
2. If the answer to Number 1 is in the affirmative, is the party seeking such damages required to show that veterinary bills incurred in the treatment of said injuries were reasonable?

## STATEMENT OF FACTS

On June 8, 2011, a bench trial was held in the underlying matter before The Honorable Dyanne J. Klein, First Justice of

the Newton District Court. A20. At that time the parties stipulated to the following facts:

At the time of the alleged incident on February 17, 2007:

1. The defendants owned the two German Sheppards present at the scene of the alleged injury.
2. One German Sheppard was unleashed.
3. One German Sheppard was leashed.

Id. After hearing all of the evidence presented, the Trial Court made the following "Judicial Findings of Fact":

On February 17, 2007, in the early afternoon, plaintiff John Irwin walked outside his front door with his Bichon Frise, Peppermint. While in Irwin's front yard, Peppermint was attacked by an unleashed German Sheppard owned by the defendants; a man who had another German Sheppard on a leash accompanied the attacking dog. The German Sheppard held onto Peppermint by the neck, shaking him back and forth, while Peppermint 'screamed' in distress. Plaintiff John Irwin, who had been disabled by a stroke in 2003 and walked with a cane, was knocked down in the ensuing fracas, and was unable to get up until a neighbor assisted him. The man accompanying the German Sheppards was finally able to separate the dogs. He leashed the attacking dog and walked away with both dogs a neighbor followed him. Upon being freed, Peppermint ran into the house and hid under a bed in a guest bedroom. The police were called.

Upon plaintiff Marcia Irwin's return home at approximately 4:00 p.m., she took Peppermint to Veterinary Emergency & Specialty Center of New England in Waltham, MA. Peppermint was in critical condition, with severe internal injuries, external bruising and multiple dog bites over his head, neck, abdomen, and chest. Emergency surgery was performed, wounds were drained and sutured, and a liver lobe was removed. Peppermint remained at the Veterinary Center for four days, and returned twice for follow-up care. The plaintiffs incurred damages of \$8608.05 for Peppermint's treatment at the Veterinary Center.

At the time of the attack on Peppermint (on plaintiffs' property), Plaintiff John Irwin was not committing a trespass or other tort, and was not teasing, tormenting or abusing the German Sheppard. A21-A22.

Dr. Amy Shroff, a veterinarian and the owner of the Veterinarian Emergency and Specialty Center of New England where Peppermint was treated, testified at the trial. Transcript at pp. 35-36. Dr. Shroff testified that, having reviewed all of the relevant medical records, she believed that the treatment rendered to Peppermint was "[a]bsolutely" medically necessary to \*4 save the dog's life. Id. at 40. More specifically, Peppermint "needed emergency surgery to go in and try and stop the bleeding to save his life." Id. at 39.

Dr. Shroff also testified that her veterinary hospital's billing is "based on the American Animal Hospital Association pricing guidelines," Id. at 42, and that "[t]he care was absolutely needed for Peppermint, and I believe that the care was given appropriately, conservatively, and that the prices were fair and reasonable." Transcript at p. 45 (emphasis added). Counsel for the defendants asked no questions about the reasonableness of the veterinary hospital's billing practices on cross-examination. Id. at pp. 53-57. Nor did counsel for the defendants raise the reasonableness of the veterinary bills as

an issue in his closing argument. Id. at pp. 96-99. Based on the facts set forth above, the Trial Court found that “[i]n the instant case, defendants are strictly liable for damages to the plaintiffs' property, Peppermint, i.e. the reasonable and necessary medical expenses incurred,” and awarded the plaintiffs \$8,608.05 in damages. A22-A23.

#### ARGUMENT

##### I. THE APPELLATE DIVISION OF THE DISTRICT COURT PROPERLY UPHELD THE TRIAL COURT'S AWARD OF DAMAGES

The Appellate Division of the District Court properly upheld the Trial Court's award of damages in the underlying matter. The Court's finding that the damages awarded by the Trial Court were consistent with the objective of awarding damages which are a “fair and reasonable measure of the owner's loss” is wholly consistent with both Massachusetts case law and the law of many other jurisdictions.

The Appellate Division of the District Court correctly noted that the defendants' argument that the plaintiffs' damages should be limited to the fair market value of their dog, “presupposes that the fair market value of the damaged property is readily ascertainable and that the diminution of fair market value would be a fair and reasonable measure of the loss suffered by the owner.” A72. Instead, “[w]here diminution in market value is unavailable or unsatisfactory as a measure of

damages, courts have routinely turned to replacement or restoration costs as the appropriate measure of damages. Massachusetts Port Auth. v. Sciaba Constr. Corp., 54 Mass. App. Ct. 509, 516 (2002). As the Appellate Division of the District Court explained, "[t]his reasoning has been adopted most often in the case of 'special purpose property' such as real property owned by nonprofit, charitable, or religious organizations, or with certain items of personal property such as heirlooms, paintings, or jewelry, where there is no ascertainable market value." A72-A73 citing Trinity Church in the City of Boston v. John Hancock Mut. Life Ins. Co., 399 Mass. 43, 44-49 (1987). The Court concluded that this was an appropriate damages analysis in this case because:

Determining damages in the care of injury to a dog involves different considerations than with other types of personal property. A dog should not be placed in the same category as an automobile or appliance, whose market value and replacement cost can be determined with a high degree of accuracy. Limiting damages to the market value of a dog or measuring damages by the diminution in market value would not be a fair and reasonable measure of the owner's loss.  
A73.

The Appellate Division of the District Court's analysis was correct whether a pet dog is classified as "special purpose property" or "real property." While the plaintiffs acknowledge that the "fair market value" test is the test normally applied



to real property, the Court in Massachusetts Port Auth.

recognized that:

Because real property is often unique, no fixed formula for measuring damages had been derived from this principle... The body of law that has developed in this area reflects that upholding the principle of fair and reasonable compensation requires flexibility in measuring the appropriate damages so as to account for the unusual or specialized character of real property and any special value it may hold for the particular owner. For this reason, in awarding damages the finder of fact should take into consideration all relevant evidence bearing on the nature of the property, the extent of the injury or loss, and the amount of money that will fairly compensate its owner for its injury or loss... The trial judge has broad discretion to determine whether evidence other than fair market value is relevant to the question of damages.

Massachusetts Port Auth., 54 Mass. App. Ct. at 514

(citations omitted) (emphasis added). In other words, Market value does not in all cases afford a correct measure of indemnity, and is not therefore 'a universal test.'" Russell v. City of New Bedford, 74 Mass. App. Ct. 715, 723 (2009) (quoting Trinity Church, 339 Mass. at 48 and Massachusetts Port Auth., 54 Mass. App. Ct. at 514) (emphasis added). Where the property at issue is a pet dog which has been critically injured, "market value" is not an appropriate measure of damages. As a policy matter, a "market value" analysis in injured pet cases would discourage pet owners from attempting to save injured animals if the cost of saving the animal might exceed the amount paid for the animal. Again, "[t]he trial judge has broad discretion to

determine whether evidence other than fair market value is relevant to the question of damages.” Massachusetts Port Auth., 54 Mass. App. Ct. at 514. Here, where the injured dog was in critical condition, with severe internal injuries, external bruising and multiple dog bites over his head, neck, abdomen, and chest,” the Trial Court appropriately took into consideration the costs expended by the plaintiffs in restoring the property (their dog, Peppermint) to his pre-attack, living, condition. As the Trial Court awarded the plaintiffs' damages which were in accord with the evidence presented at trial, as well as the governing statute, the defendants' appeal must be denied.

The Supreme Judicial Court's 1864 decision in Gillett v. Western Railroad Corporation, 90 Mass. 560 (1864) is by no means inconsistent with the reasoning of the Appellate Division of the District Court. The Court in Gillett found that, where the defendant was responsible for causing injuries to the plaintiffs' horses, “[t]he plaintiffs were entitled to recover their reasonable expenses incurred in curing the horses.” Gillett, 90 Mass. at 563. Similarly, the Appellate Division of the District Court has held that where the defendants' dog attacks the plaintiffs' dog, the plaintiff is entitled to “recover their reasonable expenses incurred in curing the

[dog]." The Appellate Division of the District Court's decision is perfectly consistent with the Court's decision in Gillett.

While the defendant would have the Court believe that the Appellate Division of the District Court's decision stands in contradiction to the decisions of the other forty-nine (49) states in addressing similar matters, the Appellate Division of the District Court's decision is, in fact, wholly consistent with those of many other states. As an initial matter, it must be noted that while the Court in Nichols v. Sukaro Kennels, 555 N.W.2d 689 (1996), a case upon which the defendants rely, did indeed find that "whether an animal is injured or destroyed, the total damages ordinarily recoverable may not exceed its value prior thereto," Nichols v. Sukaro Kennels, 555 N.W.2d 689, 692 (1996), the Court also explained that "[t]here may be other elements of damage" such as "relatively long life of breed, its training, usefulness and desirable traits" and "expense of treatment or temporary loss of use or of produce. Nichols, 555 N.W.2d at 691-92, before awarding the plaintiff damages in the amount of \$326.24 in veterinary expenses for treatment of their injured pet dog. Id.

In Burgess v. Shampooch Pet Indus., 35 Kan.App.2d 458 (2006), the Kansas Court of Appeals reached a holding very similar to the Appellate Division of the District Court's based on much of the same logic. In Burgess, the plaintiff's pet dog

suffered a dislocated hip while in the care of the defendant and the Court awarded the plaintiff damages in the amount of veterinary bills totaling \$1,308.89. In doing so, the Court explained that:

The Restatement and most jurisdictions take a position that in such cases it would be unjust to limit damages to the fair market value and, instead, use the so-called 'value to the owner... as the measure of damages. See Restatement (Second) of Torts § 911, Comment e, at 474 (1965). The Restatement notes that where the subject matter cannot be replaced, the measure of the 'value to the owner' is left largely to the discretion of the trier of fact. Several jurisdictions have found that where recovery is sought for a dog's injury, however, the owner is entitled to recover the reasonable veterinary expenses incurred in treating those injuries. See Kaiser v. United States, 761 F. Supp. 150 (D.D.C. 1991) [462] (\$1786.50 in veterinary fees awarded pursuant to the Federal Tort Claims Act for injury to dog shot by United States Capitol Police officer); Kurash v. Layton, 251 N.J. Super. 412, 598 A.2d 535 (1991) ( \$851 in veterinary fees awarded to owner whose dog sustained injuries when it was impregnated by defendant's trespassing dog) .

Burgess, 35 Kan.App.2d at 461-462 (citations omitted)

(emphasis added). The Court in Burgess went on to hold that:

[W]hen an injured pet dog with no discernible market value is restored to its previous health, the measure of damages may include, but is not limited to, the reasonable and customary cost of necessary veterinary care and treatment. Id. at 463 (emphasis added).

The Burgess Court further explained that:

Market value means, generally, the price for which an article is bought and sold, and is ordinarily best established by sales in the ordinary course of business. In order for it to be said that a thing has a market value, it is necessary that there shall be a

market for such commodity. In the instant case, unlike other types of personal property, there are no true marketplaces that routinely deal in the buying and selling of previously owned pet dogs. Moreover, Murphy's real value to Burgess as a household pet is noneconomic and, as a result, is difficult if not impossible to appraise in the purely economic terms of market value... Moreover, the award of the amount Burgess spent on veterinary bills is in accord with the very purpose of the law of damages-to make Burgess whole and return her to the position she was in prior to Shampoooch's tortious conduct. Id. at 463-465.

In Leith v. Frost, 387 Ill.App.3d 430 (2008), a case in which, as here, the defendant's large dog (a husky) attacked the plaintiffs' small dog (a dachshund) in the plaintiffs' yard, the Illinois Appellate Court awarded the plaintiff \$4,784.00 for the dog's veterinary care, after it:

[S]pecifically adopt[ed] the rationale of Burgess v. Shampoooch Pet Industries, Inc., 35 Kan. App. 2d 458, 463, 131 P.3d 1248, 1252 (2006), in which the Court of Appeals of Kansas held: "When an injured pet dog with no discernible market value is restored to its previous health, the measure of damages may include, but is not limited to, the reasonable and customary cost of necessary veterinary care and treatment." Leith v. Frost, 387 Ill.App.3d 430, 436-437 (2008) (quoting Burgess, 35 Kan. App. 2d at 463).

## II. SUFFICIENT EVIDENCE HAS BEEN PRESENTED REGARDING THE REASONABLENESS OF THE VETERINARY BILLS AT ISSUE

Sufficient evidence was presented at the underlying trial in this matter for the Trial Court, and then the Appellate Division of the District Court, to have found the veterinary bills incurred in restoring Peppermint to his pre-attack health

to be fair and reasonable. In Krasnecky v. Meffen, 56 Mass. App. Ct. 419 (2001), upon which the defendant relies, the plaintiffs introduced no evidence of economic loss and sought damages for emotional distress and loss of companionship and society.

Krasnecky, 56 Mass. App. Ct. at 421. Here, on the other hand, it is undisputed that the veterinary bills at issue were offered into evidence. Furthermore, Dr. Shroff, a veterinarian and the owner of the Veterinarian Emergency and Specialty Center of New England where Peppermint was treated, testified that her veterinary hospital's billing is "based on the American Animal Hospital Association pricing guidelines," Id. at p. 42, and that "[t]he care was absolutely needed for Peppermint, and I believe that the care was given appropriately, conservatively, and that the prices were fair and reasonable." Transcript at p. 45 (emphasis added). Counsel for the defendants asked no questions about the reasonableness of the veterinary hospital's billing practices on cross-examination. Id. at pp. 53-57. Nor did counsel for the defendants raise the reasonableness of the veterinary bills as an issue in his closing argument. Id. at pp. 96-99. "In awarding damages, the trial court has broad discretion. Only in rare instances can it be ruled that there has been an abuse of discretion amounting to an error of law." Casillo v. Worcester Area Transp. Co., 2001 Mass. App. Div. 113, 116, citing Powers v. H.B. Smith Co., 42 Mass. App. Ct. 657, 665

(1997). Based on Dr. Shroff's testimony, the Trial Court and the Appellate Division of the District Court were well within their discretion in finding that the veterinary bills incurred by the plaintiffs were reasonable.

It must further be noted that a careful reading of the defendants' brief demonstrates that the defendants have not at all addressed the issue raised on appeal - whether the "veterinary bills incurred in the treatment of said injuries were reasonable" - and instead raise a new "reasonableness" argument which has no merit. The defendants' new argument was also not properly preserved either at trial or on appeal. The plaintiffs respectfully submit that said argument, having not been properly preserved, should not be considered by the Court.

#### CONCLUSION

In conclusion, the defendants' appeal must be denied, because the Appellate Division of the District Court's finding that the damages awarded by the Trial Court were consistent with the objective of awarding damages which are a "fair and reasonable measure of the owner's loss" is wholly consistent with both Massachusetts case law and the law of many other jurisdictions, and sufficient evidence of the reasonableness of said damages was presented at trial.

WHEREFORE, for the foregoing reasons, the plaintiffs respectfully request that this Honorable Court deny the

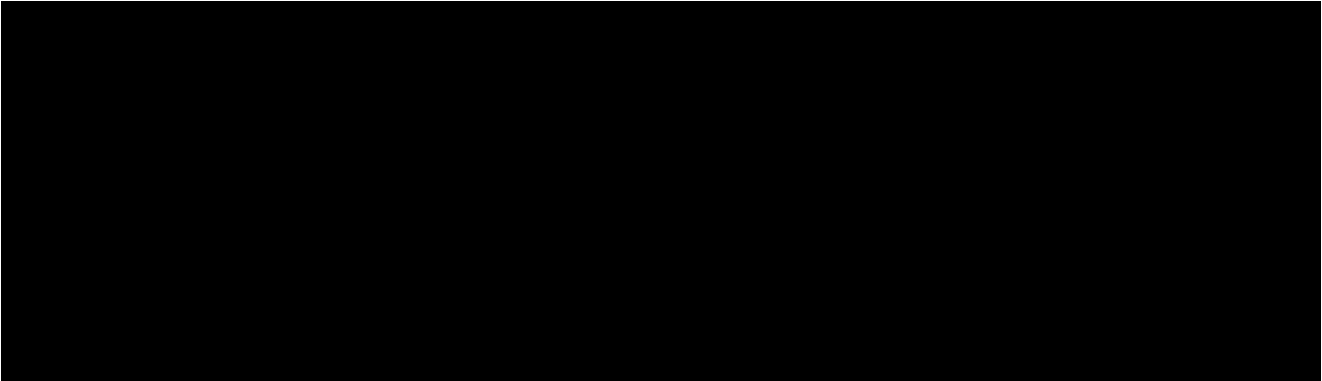
defendants' appeal and uphold the Decision and Order of the Appellate Division of the District Court affirming the Trial Court's Judgment.



ADDENDUM

	<u>Page</u>
1. Findings of Fact and Conclusions of Law, dated _____	18
2. G.L. c. 119, § 24	22
3. G.L. c. 119, § 26	24
4. G.L. c. 119, § 51A	27
5. G.L. c. 210, § 3	30
6. 110 C.M.R. § 4.32	35

COMMITTEE FOR PUBLIC COUNSEL SERVICES  
CHILDREN AND FAMILY LAW DIVISION



July 1, 2011

FINDINGS OF FACT AND CONCLUSIONS OF LAW



MOTHER OF THE CHILDREN NAMED IN THE PETITION

Name: Maria Church

DOB: 6/15/80

Address: 20 Main Street, Orange, MA

FATHER OF THE CHILD NAMED IN THE PETITION

Name: Jose Martinez

DOB: 8/5/85

Address: 13 Church Street, Springfield, MA

CHILDREN NAMED IN THE PETITION

Name: Angela Church

DOB: 7/4/04

Address: foster care

Name: Richard Church

DOB: 10/30/96

Address: foster care

TO The Honorable First Justice Miles Togo:

I, James Bond, upon information and belief, take oath and state:

1. I am employed by the Department of Children and Families as an investigator. I have been employed by this Department for twenty four years.

2. My office is located on 1 Nobusescomehere Lane, Greenfield, MA.
3. I became involved with this family on June 30<sup>th</sup>, 2011, when I was assigned to investigate a 51A alleging neglect and physical abuse of Angela Church.
4. The Department received one 51A report at 6:30 a.m. on the morning of June 30<sup>th</sup> via telephone call from a non-mandated reporter.
5. The reporter had found Angela Church, age 6 years, wandering alone near the active train tracks behind the court house in Orange, Massachusetts at 6:30 in the morning.
6. The child told the reporter that she did not dare wake up her mother before going out to play because she is afraid of her mother. The child reports that mother gets really mad when child wakes mother up in the morning.
7. The reporter stated that the child was lost, hungry, and had a bruise on her chin.
8. The Department received a second 51A at 7:30 A.M from a mandated reporter.
9. The second 51A stated that Angela Church was at the police station, having been discovered wandering near the train tracks at Court Square.
10. The same 51A reported that the child was upset, hungry, and crying. She was not appropriately dressed and dirty. The child had a bruise on her chin. The child also reported not having had supper the night before.
11. The police were unable to reach the child's mother (Maria Church) by telephone. They had to send a cruiser to locate her.
12. Both 51A reports were screened in and I was assigned the case.
13. On June 30, 2011, this investigator interviewed Officer Sandy Brown of the Orange Police Department. Officer Brown informed me that the mother was known to their Department.
14. Officer Brown first attempted to reach the mother by phone but was unsuccessful. A cruiser was sent to the mother's residence at 20 Main Street, Orange, MA.
15. Officer Brown reported that Officers Smith and Youlko pounded on the mother's door, but she did not respond. Only after they knocked on her bedroom window did she come to the door.




16. I immediately drove to the Orange Police Department and interviewed the mother, the child and the police officer.
17. At the police station, I observed the child. Angela was dirty, her hair was disheveled, she was not wearing appropriate clothing, she had no shoes and she was very, very thin and very hungry. She had a bruise the size of a half dollar on her chin. She was asleep when I arrived.
18. The mother was at the police station dressed in a torn negligee and a sweat shirt. Her hair was unbrushed. She had been crying and was very emotional and was somewhat groggy.
19. The mother reported that she had been having difficulties waking up because of new medicine she was taking for depression and anxiety. She had not heard Angela get up and leave the apartment.
20. When confronted, the mother denied that the bruise on Angela's face was serious. She reported that Angela often got scrapes and scratches. She described an incident where Angela was playing in the mud with her fourteen year old brother Richard when they argued over a stick. According to the mother, Richard hit Angela with the stick and this is how Angela got the bruise on her face. According to the mother, she was present and supervising the children when this happened.
21. I interviewed Richard, who reported that he is fourteen and does not play in the mud anymore. He denied ever hitting his sister.
22. I interviewed Angela, who denied that Richard hit her. When asked if her mother had caused her bruise, she shook her head yes.
23. Officer Brown informed this investigator that the Orange police had responded to the mother's home on April 15, 2011 when the mother apparently took an overdose of Tylenol. The mother was hospitalized at the East Spoke Psychiatric Unit.
24. When I interviewed the mother, she was not forthcoming about her overdose or mental health issues. She did not inform me of her hospitalization until I confronted her with this information.
25. Mother is prescribed Risperdal, but does not have a treating psychiatrist or a therapist at this time.
26. The mother explained that she overdosed after an argument with a boyfriend. Despite her overdose, she minimized the situation with the boyfriend stating that he got a bit loud and called her names and he hit her maybe once or twice, but never meant to. She stated she recently ended this relationship.



27. I interviewed Marta Church, the maternal grandmother who confirmed that the mother occasionally had unexplained bruises, and that the mother's boyfriend was at least emotionally abusive. Marta Church stated that the mother has a history of bad relationships.
28. This investigator went to the families' home on June 30, 2011 to pick up Richard and get clothes for the children. The condition of the home was deplorable. The apartment had an overwhelming odor of cat urine. There was garbage everywhere, piled up in big bags. There were dirty dishes in the sink, on the counter top and on the table. There was mold on the food in containers next to the sink. There was very little food in the pantry. The refrigerator was almost empty except for some beer and more moldy food. Richard's bed did not appear to have any sheets.
29. The mother informed this investigator that Richard's father died of a drug overdose in 2000. The mother believes Angela's father is Jose Martinez.
30. Jose Martinez did not contact the Department until 4:30 p.m. on Friday, July 1, 2011. Mr. Martinez was rude and inappropriate with this investigator, yelling loudly on the telephone and threatening to come pick up the child without DCF authorization.
31. Mr. Martinez has not provided the Department with any information about himself and his living situation.
32. The mother and Mr. Martinez have not been to court to establish paternity or child support. Mr. Martinez does not pay child support.
33. The maternal grandmother has reported that Mr. Martinez lives in an overcrowded home with several children, the children's mother and his mother (the paternal grandmother). The Department has information to believe that the paternal grandmother may have a CORI with drug charges. The maternal grandmother does not believe that Mr. Martinez is Angela's father.
34. Due to concerns of the mother's lack of supervision, untreated mental health issues, physical abuse, possible domestic violence, and extreme neglect as evidenced by the child's malnourished and filthy appearance and the families' deplorable living conditions, the Department assumed emergency custody of the children on June 30, 2011.
35. The maternal grandmother has asked to be a placement resource. She has prior DCF history and requires a waiver by the DCF central office before we can place with her.



 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title XVII. Public Welfare (Ch. 115-123b)  
Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 24

§ 24. Procedure to commit child to custody or other disposition; notice and summons; emergency order transferring custody; investigation; abandoned children

Effective: July 8, 2008

[Currentness](#)

A person may petition under oath the juvenile court alleging on behalf of a child within its jurisdiction that the child: (a) is without necessary and proper physical or educational care and discipline; (b) is growing up under conditions or circumstances damaging to the child's sound character development; (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention.

The court may issue a precept to bring the child before the court, and shall issue a notice to the department and summonses to both parents of the child to show cause why the child should not be committed to the custody of the department or why any other appropriate order should not be made. A petition under this section may be brought in the judicial district where the child is located or where the parent, guardian with care and custody or custodian is domiciled. The summonses shall include notice that the court may dispense with the right of the parents to notice of or consent to the adoption, custody or guardianship or any other disposition of the child named therein if it finds that the child is in need of care and protection and that the best interests of the child would be served by any such disposition. Notice shall be by personal service upon the parent. If the identity or whereabouts of a parent is unknown, the petitioner shall cause notice in a form prescribed by the court to be served upon such parent by publication once in each of 3 successive weeks in any newspaper as the court may order. If no parent can be found after reasonable search, a summons shall be issued to the child's legal guardian, if any, known to reside within the commonwealth and, if none, to the person with whom such child last resided, if known.

If the court is satisfied after the petitioner testifies under oath that there is reasonable cause to believe that: (i) the child is suffering from serious abuse or neglect or is in immediate danger of serious abuse or neglect; and (ii) that immediate removal of the child is necessary to protect the child from serious abuse or neglect, the court may issue an emergency order transferring custody of the child for up to 72 hours to the department or to a licensed child care agency or individual described in subclause (ii) of [clause \(2\) of subsection \(b\) of section 26](#).

Upon entry of the order, notice to appear before the court shall be given to either parents, both parents, a guardian with care and custody or another custodian. At that time, the court shall determine whether temporary custody shall continue beyond 72 hours until a hearing on the merits of the petition for care and protection is concluded before the court. The court shall also consider the provisions of [section 29C](#) and shall make the written certification and determinations required by said [section 29C](#).

Upon the issuance of the precept and order of notice, the court shall appoint a person qualified under [section 21A](#) to investigate the conditions affecting the child and to make a report under oath to the court, which shall be attached to the petition and be a part of the record.

If the child is alleged to be abandoned, as defined in [section 3 of chapter 210](#), hearings on the petition under [section 26](#) shall be expedited. If the parents or guardians consent, a child may be committed to the department under this section without a hearing or notice.


#### Credits

Added by St.1954, c. 646, § 1. Amended by St.1969, c. 859, § 8; St.1972, c. 731, § 8; St.1973, c. 1076, § 2; St.1974, c. 260, § 19; St.1975, c. 276, § 3; St.1977, c. 799; St.1978, c. 478, §§ 49, 50; St.1980, c. 181; St.1983, c. 182; St.1984, c. 197, § 2; St.1992, c. 303, § 1; St.1992, c. 379, § 8; St.1996, c. 450, § 159; St.1999, c. 3, § 6; St.2008, c. 176, § 84, eff. July 8, 2008; St.2008, c. 215, § 64C, eff. July 8, 2008.

#### [Notes of Decisions \(183\)](#)

M.G.L.A. 119 § 24, MA ST 119 § 24

Current through Chapter 7 of the 2019 1st Annual Session

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title XVII. Public Welfare (Ch. 115-123b)  
Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 26

§ 26. Procedure at hearing; order of commitment; petition to dispense with parental consent to adoption; reimbursement of commonwealth; petition for review

Effective: July 8, 2008

[Currentness](#)

(a) If the child is identified by the court and it appears that the precept and summonses have been duly and legally served, that notice has been issued to the department and the report of the person qualified under [section 21A](#) is received, the court may excuse the child from the hearing and shall proceed to hear the evidence.

(b) If the court finds the allegations in the petition proved within the meaning of this chapter, it may adjudge that the child is in need of care and protection. In making such adjudication, the health and safety of the child shall be of paramount concern. If the child is adjudged to be in need of care and protection, the court may commit the child to the custody of the department until he becomes an adult or until, in the opinion of the department, the object of his commitment has been accomplished, whichever occurs first; and the court shall consider the provisions of [section 29C](#) and shall make the written certification and determinations required by said [section 29C](#). The court also may make any other appropriate order, including conditions and limitations, about the care and custody of the child as may be in the child's best interest including, but not limited to, any 1 or more of the following:

(1) It may permit the child to remain with a parent, guardian or other custodian, and may require supervision as directed by the court for the care and protection of the child.

(2) It may transfer temporary or permanent legal custody to:

(i) any person, including the child's parent, who, after study by a probation officer or other person or agency designated by the court, is found by the court to be qualified to give care to the child;

(ii) any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(iii) the department of children and families.

(3) It may order appropriate physical care including medical or dental care.



(4) It may dispense with the need for consent of any person named in [section 2 of chapter 210](#) to the adoption, custody, guardianship or other disposition of the child named therein.

In determining whether such an order should be made, the standards set forth in section 3 of said chapter 210 concerning an order to dispense with the need for consent to adoption of a child shall be applied. If the child who is the subject of the petition is under the age of 12, and if the court adjudicates the child to be in need of care and protection under this section, the court shall enter an order dispensing with the need for consent to adoption upon finding that the best interests of the child, as defined in paragraph (c) of said section 3 of said chapter 210, will be served thereby. The entry of such an order shall have the effect of terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein.

The department shall file a petition or a motion to amend a petition to dispense with parental consent to adoption, custody, guardianship or other disposition of the child if: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of such parent; or (iii) the child has been in foster care in the custody of the state for 15 of the immediately preceding 22 months. Under this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, under [section 24](#) or this section, that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home. The department shall concurrently identify, recruit, process and approve a qualified family for adoption.

The department need not file such a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary for the safe return of the child to the child's home if reasonable efforts as set forth in [section 29C](#) are required to be made with respect to the child.

Notwithstanding the foregoing, the following circumstances shall constitute grounds for dispensing with the need for consent to adoption, custody, guardianship or other disposition of the child: (i) the child has been abandoned; or (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of the parent.

(5) The court may order the parents or parent of said child to reimburse the commonwealth or other agency for care in appropriate cases.

(c) On any petition filed in any court under this section, the department or the parents, person having legal custody, probation officer or guardian of a child or the counsel or guardian ad litem for a child may petition the court not more than once every 6 months for a review and redetermination of the current needs of such child whose case has come before the court, except that any person against whom a decree to dispense with consent to adoption has been entered under clause (4) of subsection (b) shall not have such right of petition for review and redetermination. Unless the court enters written findings setting forth specific extraordinary circumstances that require continued intervention by the court, the court shall enter a final order of adjudication and permanent disposition, not later than 15 months after the date the case was first filed in court. The date by which a final order of adjudication and permanent disposition shall be entered may

be extended once for a period not to exceed 3 months and only if the court makes a written finding that the parent has made consistent and goal-oriented progress likely to lead to the child's return to the parent's care and custody. Findings in support of such final order of adjudication and permanent disposition shall be made in writing within a reasonable time of the court's order. The court shall not lose jurisdiction over the petition by reason of its failure to enter a final order and the findings in support thereof within the time set forth in this paragraph.

**Credits**

Added by St.1954, c. 646, § 1. Amended by St.1973, c. 925, § 41; St.1973, c. 1076, § 3; St.1978, c. 552, § 29; St.1983, c. 117; St.1992, c. 303, §§ 2, 3; St.1993, c. 486, § 3; St.1997, c. 43, § 99; St.1998, c. 14, § 1; St.1999, c. 3, §§ 8, 9; St.1999, c. 6, § 1; St.2008, c. 176, § 84, eff. July 8, 2008; St.2008, c. 215, § 64D, eff. July 8, 2008.

[Notes of Decisions \(232\)](#)


M.G.L.A. 119 § 26, MA ST 119 § 26

Current through Chapter 7 of the 2019 1st Annual Session

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Proposed Legislation

Massachusetts General Laws Annotated  
Part I. Administration of the Government (Ch. 1-182)  
Title XVII. Public Welfare (Ch. 115-123b)  
Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 51A

§ 51A. Reporting of suspected abuse or neglect; mandated reporters; collection of physical evidence; penalties; content of reports; liability; privileged communication

Effective: February 19, 2012

[Currentness](#)

(a) A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by [section 20M of chapter 233](#).

If a mandated reporter is a member of the staff of a medical or other public or private institution, school or facility, the mandated reporter may instead notify the person or designated agent in charge of such institution, school or facility who shall become responsible for notifying the department in the manner required by this section.

A mandated reporter may, in addition to filing a report under this section, contact local law enforcement authorities or the child advocate about the suspected abuse or neglect.

(b) For the purpose of reporting under this section, hospital personnel may have photographs taken of the areas of trauma visible on the child without the consent of the child's parents or guardians. These photographs or copies thereof shall be sent to the department with the report.

If hospital personnel collect physical evidence of abuse or neglect of the child, the local district attorney, local law enforcement authorities, and the department shall be immediately notified. The physical evidence shall be processed immediately so that the department may make an informed determination within the time limits in [section 51B](#). If there is a delay in processing, the department shall seek a waiver under [subsection \(d\) of section 51B](#).

(c) Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 ½ years and a fine of not more than \$2,000 for the third and subsequent offenses.

Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of up to \$5,000 or imprisonment in

the house of correction for not more than 2 ½ years or by both such fine and imprisonment; and, upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter's violation of this paragraph.

(d) A report filed under this section shall contain: (i) the names and addresses of the child and the child's parents or other person responsible for the child's care, if known; (ii) the child's age; (iii) the child's sex; (iv) the nature and extent of the child's injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.

(e) A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of [section 3 of chapter 38](#). Any person who fails to file a report under this subsection shall be punished by a fine of not more than \$1,000.

(f) Any person may file a report under this section if that person has reasonable cause to believe that a child is suffering from or has died as a result of abuse or neglect.

(g) No mandated reporter shall be liable in any civil or criminal action for filing a report under this section or for contacting local law enforcement authorities or the child advocate, if the report or contact was made in good faith, was not frivolous, and the reporter did not cause the abuse or neglect. No other person filing a report under this section shall be liable in any civil or criminal action by reason of the report if it was made in good faith and if that person did not perpetrate or inflict the reported abuse or cause the reported neglect. Any person filing a report under this section may be liable in a civil or criminal action if the department or a district attorney determines that the person filing the report may have perpetrated or inflicted the abuse or caused the neglect.

(h) No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, files a report under this section, testifies or is about to testify in any proceeding involving child abuse or neglect. Any employer who discharges, discriminates or retaliates against that mandated reporter shall be liable to the mandated reporter for treble damages, costs and attorney's fees.

(i) Within 30 days of receiving a report from a mandated reporter, the department shall notify the mandated reporter, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child and the services that the department intends to provide to the child or the child's family.

(j) Any privilege relating to confidential communications, established by [sections 135 to 135B, inclusive, of chapter 112](#) or by [sections 20A and 20B of chapter 233](#), shall not prohibit the filing of a report under this section or a care and protection petition under [section 24](#), except that a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner need not report information solely gained in a confession or similarly confidential communication in other religious faiths. Nothing in the general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or

accredited Christian Science practitioner to report suspected child abuse or neglect under this section when the priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner is acting in some other capacity that would otherwise make him a mandated reporter.

(k) A mandated reporter who is professionally licensed by the commonwealth shall complete training to recognize and report suspected child abuse or neglect.

#### **Credits**

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 276, § 4; St.1977, c. 501; St.1977, c. 942; St.1978, c. 215, § 1; St.1979, c. 312, § 1; St.1980, c. 434; St.1981, c. 91, § 2; St.1982, c. 102; St.1983, c. 222; St.1984, c. 83, §§ 1, 2; St.1985, c. 209; St.1986, c. 230, §§ 1, 2; [St.1989, c. 219](#); [St.1989, c. 535, § 5](#); [St.1990, c. 474, § 1](#); [St.1991, c. 280](#); [St.1992, c. 115, § 1](#); [St.1993, c. 50, § 23](#); [St.1997, c. 197](#); [St.2002, c. 107, §§ 1 to 4](#); [St.2008, c. 176, § 95, eff. July 8, 2008](#); [St.2008, c. 176, § 96, eff. July 1, 2010](#); [St.2008, c. 176, § 97, eff. Jan. 1, 2010](#); [St.2011, c. 178, § 10, eff. Feb. 19, 2012](#).

#### [Notes of Decisions \(57\)](#)

M.G.L.A. 119 § 51A, MA ST 119 § 51A

Current through Chapter 7 of the 2019 1st Annual Session



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Proposed Legislation

Massachusetts General Laws Annotated

Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)

Title III. Domestic Relations (Ch. 207-210)

Chapter 210. Adoption of Children and Change of Names (Refs & Annos)

M.G.L.A. 210 § 3

§ 3. Dispensing with required consent in certain cases

Effective: July 1, 2012

Currentness

(a) Whenever a petition for adoption is filed by a person having the care or custody of a child, the consent of the persons named in [section 2](#), other than that of the child, shall not be required if:-- (i) the person to be adopted is 18 years of age or older; or (ii) the court hearing the petition finds that the allowance of the petition is in the best interests of the child pursuant to paragraph (c).

(b) The department of children and families or a licensed child care agency may commence a proceeding, independent of a petition for adoption, in the probate court in Suffolk county or in any other county in which the department or agency maintains an office, to dispense with the need for consent of any person named in [section 2](#) to adoption of the child in the care or custody of the department or agency. Notice of such proceeding shall be given to such person in a manner prescribed by the court. The court shall appoint counsel to represent the child in the proceeding unless the petition is not contested by any party. The court shall issue a decree dispensing with the need for consent or notice of any petition for adoption, custody, guardianship or other disposition of the child named therein, if it finds that the best interests of the child as provided in paragraph (c) will be served by the decree. Pending a hearing on the merits of a petition filed under this paragraph, temporary custody may be awarded to the petitioner. The entry of such decree shall have the effect of terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein. The department shall provide notice of the hearing on the merits to any foster parent, pre-adoptive parent or relative providing care for the child informing the foster parent, pre-adoptive parent or relative of his right to attend the hearing and be heard. The provisions of this paragraph shall not be construed to require that a foster parent, pre-adoptive parent or relative be made a party to the proceeding.

A petition brought pursuant to this paragraph may be filed and a decree entered notwithstanding the pendency of a petition brought under chapter 119 or chapter 201 regarding the same child. The chief justice of the trial court may, pursuant to the provisions of [section 9 of chapter 211B](#), assign a justice from any department of the trial court to sit as a justice in any other department or departments of the trial court and hear simultaneously a petition filed under this paragraph and any other pending case or cases involving custody or adoption of the same child. A temporary or permanent custody decree shall not be a requirement to the filing of such petition.

A juvenile court or a district court shall enter a decree dispensing with the need for consent of any person named in [section 2](#) to the adoption of a child named in a petition filed pursuant to section 24 of chapter 119 in such court upon a finding that such child is in need of care and protection pursuant to section 26 of said chapter 119 and that the best interests of the child as defined in paragraph (c) will be served by such decree. The entry of such decree shall have the effect of

terminating the rights of a person named therein to receive notice of or to consent to any legal proceeding affecting the custody, guardianship, adoption or other disposition of the child named therein. Facts may be set forth either in the care and protection petition filed pursuant to said section 24 of said chapter 119 or upon a motion made in the course of a care and protection proceeding, alleging that the allowance of the petition or motion is in the best interests of the child.

The department of children and families shall file a petition or, in the alternative, a motion to amend a petition pending pursuant to [section 26 of chapter 119](#) to dispense with parental consent to adoption, custody, guardianship or other disposition of the child under the following circumstances: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of any assault constituting a felony which results in serious bodily injury to the child or to another child of the parent; or (iii) the child has been in foster care in the custody of the commonwealth for 15 of the immediately preceding 22 months. For the purposes of this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, pursuant to [section 24](#) or [section 26 of chapter 119](#), that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home. For the purposes of this paragraph, “serious bodily injury” shall mean bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The department shall concurrently identify, recruit, process and approve a qualified family for adoption.

The department need not file a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child, or, where the child is the subject of a pending petition pursuant to [section 26 of chapter 119](#), a motion to amend the petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child, if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary for the safe return of the child to the child's home if reasonable efforts as set forth in section 29C of said chapter 119 are required to be made with respect to the child.

(c) In determining whether the best interests of the child will be served by granting a petition for adoption without requiring certain consent as permitted under paragraph (a), the court shall consider the ability, capacity, fitness and readiness of the child's parents or other person named in [section 2](#) to assume parental responsibility and shall also consider the ability, capacity, fitness and readiness of the petitioners under said paragraph (a) to assume such responsibilities. In making the determination, the health and safety of the child shall be of paramount, but not exclusive, concern.

In determining whether the best interests of the child will be served by issuing a decree dispensing with the need for consent as permitted under paragraph (b), the court shall consider the ability, capacity, fitness and readiness of the child's parents or other person named in [section 2](#) to assume parental responsibility, and shall also consider the plan proposed by the department or other agency initiating the petition. In making the determination, the health and safety of the child shall be of paramount, but not exclusive, concern.

In considering the fitness of the child's parent or other person named in [section 2](#), the court shall consider, without limitation, the following factors:

(i) the child has been abandoned;

(ii) the child or another member of the immediate family of the child has been abused or neglected as a result of the acts or omissions of one or both parents, the parents were offered or received services intended to correct the circumstances which led to the abuse or neglect and refused, or were unable to utilize such services on a regular and consistent basis so that a substantial danger of abuse or neglect continues to exist, or have utilized such services on a regular and consistent basis without effectuating a substantial and material or permanent change in the circumstances which led to the abuse or neglect;

(iii) a court of competent jurisdiction has transferred custody of the child from the child's parents to the department, the placement has lasted for at least six months and the parents have not maintained significant and meaningful contact with the child during the previous six months nor have they, on a regular and consistent basis, accepted or productively utilized services intended to correct the circumstances;

(iv) the child is four years of age or older, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least 12 of the immediately preceding 15 months and the child cannot be returned to the custody of the parents at the end of such 15-month period; provided, however, that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;

(v) the child is younger than four years of age, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least 6 of the immediately preceding 12 months and the child cannot be returned to the custody of the parents at the end of such 12-month period; provided, however, that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;

(vi) the parent, without excuse, fails to provide proper care or custody for the child and there is a reasonable expectation that the parent will not be able to provide proper care or custody within a reasonable time considering the age of the child provided that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;

(vii) because of the lengthy absence of the parent or the parent's inability to meet the needs of the child, the child has formed a strong, positive bond with his substitute caretaker, the bond has existed for a substantial portion of the child's life, the forced removal of the child from the caretaker would likely cause serious psychological harm to the child and the parent lacks the capacity to meet the special needs of the child upon removal;

(viii) a lack of effort by a parent or other person named in [section 2](#) to remedy conditions which create a risk of harm due to abuse or neglect of the child;

(ix) severe or repetitive conduct of a physically, emotionally or sexually abusive or neglectful nature toward the child or toward another child in the home;

(x) the willful failure to visit the child where the child is not in the custody of the parent or other person named in [section 2](#);



(xi) the willful failure to support the child where the child is not in the custody of the parent or other person named in [section 2](#). Failure to support shall mean that the parent or other person has failed to make a material contribution to the child's care when the contribution has been requested by the department or ordered by the court;

(xii) a condition which is reasonably likely to continue for a prolonged, indeterminate period, such as alcohol or drug addiction, mental deficiency or mental illness, and the condition makes the parent or other person named in [section 2](#) unlikely to provide minimally acceptable care of the child;

(xiii) the conviction of a parent or other person named in [section 2](#) of a felony that the court finds is of such a nature that the child will be deprived of a stable home for a period of years. Incarceration in and of itself shall not be grounds for termination of parental rights; or

(xiv) whether or not there has been a prior pattern of parental neglect or misconduct or an assault constituting a felony which resulted in serious bodily injury to the child and a likelihood of future harm to the child based on such prior pattern or assault.

For the purposes of this section “abandoned” shall mean being left without any provision for support and without any person responsible to maintain care, custody and control because the whereabouts of the person responsible therefor is unknown and reasonable efforts to locate the person have been unsuccessful. A brief and temporary absence from the home without intent to abandon the child shall not constitute abandonment.

Hearings on petitions to dispense with consent to adoption that allege that a child has been abandoned shall be scheduled and heard on an expedited basis. Notwithstanding the foregoing, the following circumstances shall constitute grounds for dispensing with the need for consent to adoption, custody, guardianship or other disposition of the child: (i) the child has been abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting, conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault constituting a felony which resulted in serious bodily injury to the child or to another child of the parent. For the purposes of this section, “serious bodily injury” shall mean bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

(d) Nothing in this section shall be construed to prohibit the petitioner and a birth parent from entering into an agreement for post-termination contact or communication. The court issuing the termination decree under this section shall have jurisdiction to resolve matters concerning the agreement. Such agreement shall become null and void upon the entry of an adoption or guardianship decree.

Notwithstanding the existence of any agreement for post-termination or post-adoption contact or communication, the decree entered under this section shall be final.

Nothing in this section shall be construed to prohibit a birth parent who has entered into a post-termination agreement from entering into an agreement for post-adoption contact or communication pursuant to [section 6C](#) once an adoptive family has been identified.

**Credits**

Amended by St.1941, c. 61; St.1945, c. 239; St.1945, c. 300; St.1951, c. 674; St.1952, c. 352; St.1953, c. 61; St.1955, c. 89; St.1963, c. 71, § 1; St.1972, c. 800, § 2; St.1978, c. 552, § 36; St.1983, c. 437; St.1985, c. 244; [St.1989, c. 145](#); [St.1992, c. 303, §§ 4, 5](#); [St.1998, c. 14, §§ 2, 3](#); [St.1999, c. 3, § 17](#); [St.1999, c. 6, §§ 3, 4](#); [St.2008, c. 176, § 119, eff. July 8, 2008](#); [St.2011, c. 93, § 43, eff. July 1, 2012](#).

[Notes of Decisions \(651\)](#)

M.G.L.A. 210 § 3, MA ST 210 § 3

Current through Chapter 7 of the 2019 1st Annual Session

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## 110 CMR 4.32

This document reflects all regulations in effect as of 08/29/2014

Code of Massachusetts Regulations > TITLE 110: DEPARTMENT OF CHILDREN AND FAMILIES  
> CHAPTER 4.00: INTAKE > Intake for Protective Service Delivery

### **4.32: Decision to Support/Unsupport a Report**

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

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

- (3) Each determination by the Department that the allegations of a 51A report are "unsupported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are unsupported, in a form letter established for use by the Department. All collaterals who were contacted by the investigator, shall be notified in writing of the decision to unsupport the report, unless the target of the investigation requests that such notification not occur. If the 51A report in question was filed by a mandated reporter, the mandated reporter is notified of the decision on a form established by the Department. If the 51A report in question contained an allegation of institutional abuse or neglect which occurred at a facility owned, operated, or funded, in whole or in part, by any department or office listed in [110 CMR 4.43](#), or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in [110 CMR 4.43](#), then the director or owner of such facility shall also be sent a copy of said letter.
- (4) Each determination by the Department that the allegations of a 51A report are "supported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are supported, in a form letter established for use by the Department. If the 51A report in question was filed by a mandated reporter, a copy of the letter shall also be provided to the mandated reporter. In addition, upon request by any mandated reporter of a supported 51A report, the Department shall inform the mandated reporter of the social service(s), if any, that the Department intends to provide to the child and/or the child's family. If the 51A report in question contained an allegation of institutional abuse or neglect which occurred at a facility owned, operated, or funded, in whole or in part, by any department or office listed in [110 CMR 4.43](#), or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in [110 CMR 4.43](#), then the director or owner of such facility shall also be sent a copy of said letter.
- (5) Whenever the Department, after an investigation, supports a 51A report on a child under the age of three, the family shall be referred for early intervention services. The department will provide the early intervention program with the minimum information needed to contact the family, utilizing a form developed by the Department.

## Statutory Authority

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### REGULATORY AUTHORITY

[110 CMR 4.01](#); [M.G.L. c. 18B, §§ 4 and 7\(i\)](#); c. 119, § 23(A) and c. 210, § 2;

CODE OF MASSACHUSETTS REGULATIONS