

The Board of Registration of Psychologists

# PSYCHOLOGY JURISPRUDENCE BOOK

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## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 19A. DEPARTMENT OF ELDER AFFAIRS**

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#### **Chapter 19A: Section 14. Definitions applicable to sections 14 to 26**

Section 14. For the purposes of sections fourteen to twenty-six, inclusive, the following words and terms shall, unless the context otherwise requires, have the following meaning:

"Abuse", an Act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

"Caretaker", the person responsible for the care of an elderly person, which responsibility may arise as the result of a family relationship, or by a voluntary or contractual duty undertaken on behalf of an elderly person, or may arise by a fiduciary duty imposed by law.

"Conservator", a person who is appointed to manage the estate of a person pursuant to chapter two hundred and one.

"Court", the probate and family court.

"Department", the department of elder affairs.

"Elderly person", an individual who is sixty years of age or over.

"Emergency", a situation in which an elderly person is living in conditions which present a substantial risk of death or immediate and serious physical or mental harm.

"Financial exploitation", an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person;

provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A.

"Guardian", a person who has qualified as a guardian of an elderly person pursuant to chapter two hundred and one, but shall not include a guardian ad litem.

"Protected person", an elderly person for whom a conservator or guardian has been appointed or other protective order has been made.

"Protective services", services which are necessary to prevent, eliminate or remedy the effects of abuse to an elderly person.

"Protective services agency", a public or nonprofit private agency, corporation, board, or organization designated by the department pursuant to this chapter to furnish protective services to elderly persons.

### **Chapter 19A: Section 15. Reports of abuse; liability**

Section 15. (a) Any physician, physician assistant, medical intern, dentist, nurse, family counselor, probation officer, social worker, policeman, firefighter, emergency medical technician, licensed psychologist, coroner, registered physical therapist, registered occupational therapist, osteopath, podiatrist, director of a council on aging, outreach worker employed by a council on aging, executive director of a licensed home health agency or executive director of a homemaker service agency or manager of an assisted living residence who has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse, shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency. Any person so required to make such reports who fails to do so shall be punished by a fine of not more than one thousand dollars.

(b) The executive director of a home care corporation, licensed home health agency or homemaker service agency shall establish procedures within such agency to ensure that homemakers, home health aides, case managers or other staff of said agency who have reasonable cause to believe that an elderly person has been abused shall report such case to the executive director of the corporation or agency. The executive director shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency.

(c) In addition to a person required to report under the provisions of subsection (a) of this section, any other person may make such a report to the department or its designated agency, if any such person has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.

(d) No person required to report pursuant to the provisions of subsection (a) shall be liable in any civil or criminal action by reason of such report; provided, however, that such person did not perpetrate, inflict or cause said abuse. No other person making such a report pursuant to the provisions of subsection (b) or (c) shall be liable in any civil or criminal action by reason of such report if it was made in good faith; provided, however, that such person did not perpetrate, inflict or cause said abuse. Any person making a report under subsection (a), (b) or (c) who, in the determination of the department or the district attorney may have perpetrated, inflicted or caused said abuse may be liable in a civil or criminal action by reason

of such report. No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisee who files a report in accordance with the provisions of this section by reason of such report.

(e) Reports made pursuant to subsections (a) and (b) shall contain the name, address and approximate age of the elderly person who is the subject of the report, information regarding the nature and extent of the abuse, the name of the person's caretaker, if known, any medical treatment being received or immediately required, if known, any other information the reporter believes to be relevant to the investigation, and the name and address of the reporter and where said reporter may be contacted, if the reporter wishes to provide said information. The department shall publicize the provisions of this section and the process by which reports of abuse shall be made.

(f) Any privilege established by sections one hundred and thirty-five A and one hundred and thirty-five B of chapter one hundred and twelve or section twenty B of chapter two hundred and thirty-three relating to the exclusion of confidential communications shall not prohibit the filing of a report pursuant to the provisions of subsection (a), (b) or (c).

### **Chapter 19A: Section 16. Protective services system**

Section 16. (a) Subject to appropriation, the department shall develop a coordinated system of protective services for elderly persons who are determined to be abused. In planning this system, the department shall require input from the department of social services, the existing protective service agencies and other agencies currently involved in the provision of social, health, legal, nutritional, and other services to the elderly, as well as elderly advocacy organizations.

(b) Within this protective services system, the department shall establish a mechanism for the receipt of reports made pursuant to section fifteen which shall operate and be accessible on a twenty-four hour per day basis. If the department or its designated agency has reasonable cause to believe that an elderly person has died as a result of abuse, the death shall be reported immediately to the district attorney of the county in which the abuse occurred. Within forty-five days of the receipt of a report made pursuant to subsection (a) of said section fifteen, the department or its designated agency shall notify the reporter, in writing, of its response to the report. Such notification shall be made to a person who makes a report pursuant to subsection (c) of said section fifteen if said reporter so requests.

(c) Subject to appropriation, the department shall designate at least one local agency to act on behalf of the department with a geographic area as defined by the department. The department may designate any public agency or private nonprofit organization which has the capacity to implement a service plan through direct access to social, health and mental health services. The department shall utilize existing resources and services of public and nonprofit private agencies in providing protective services. The department shall insure that assessment, evaluation and service delivery shall be provided through the designated local agency closest to the elderly person's community.

In designating agencies, the department shall insure that: (1) persons conducting assessment, evaluation and service delivery have demonstrated experience in providing protective and other social health services to elders, have these protective functions as their primary employment responsibility, and have other professional qualifications as determined by the secretary; (2) continuity of care under one protective services worker is assured throughout assessment, evaluation and services delivery to the extent possible; and (3) the department and the designated agencies have the capacity to respond to an emergency and provide or arrange for services to alleviate the immediate danger of abuse of an elderly person on twenty-four hours per day basis.

The department shall monitor assessments, evaluations and the provision of protective services by designated local agencies.

(d) The department shall issue regulations establishing criteria and procedures for the designation of protective services agencies or for the termination or designation or redesignation of protective services agencies.

(e) The department shall be responsible for continuing coordination and supervision of the system. In carrying out these duties, the department shall, subject to appropriation: (1) adopt rules and regulations for the system; (2) continuously monitor the effectiveness of the system and perform evaluative research about it; and (3) utilize grants from federal, state and other public and private sources to support the system.

### **Chapter 19A: Section 17. Protective services agencies; authorized activities**

Section 17. A protective services agency is authorized:

- (1) to receive and investigate reports of abuse;
- (2) to furnish protective services to an elderly person with his or her consent;
- (3) to petition the court for appointment of a conservator or guardian or for issuance of an emergency order for protective services;
- (4) to furnish protective services to an elderly person on an emergency basis as hereinafter provided;
- (5) to furnish protective services to a protected person with the consent of such person's guardian or conservator;
- (6) to serve as conservator, guardian, or temporary guardian of a protected person; and
- (7) to perform all other functions determined by the department to be necessary for the administration of this chapter.

Chapter 19A: Section 18. Assessment and evaluation of reports; investigations; arrangement for protective services

Section 18. (a) The department or its designated agency shall assess and evaluate the information reported pursuant to the provisions of section fifteen.

Such assessment shall include a visit to the residence of the elderly person who is the subject of the report and may include consultations with appropriate service agencies and individuals who have knowledge of the elderly person's situation including the person filing the report. The elderly person who is the subject of the report shall receive written notice that an assessment is being conducted and shall have the right to review the file and report developed as a result of the assessment.

If the assessment results in a determination that the elderly person is suffering from abuse, the department or the designated agency shall evaluate the elderly person's functional capacity, situation, and resources and shall develop a service plan for the provision of protective services. Said plan shall be appropriate to the needs of the elderly person and shall utilize the least restrictive alternatives.

The department shall adopt rules and regulations establishing time limits for the completion of assessments and evaluations and for the implementation of service plans; provided, however, that if an emergency exists, assessments shall be completed within twenty-four hours of the receipt of the report.

If an assessment results in a determination that the elderly person has suffered serious abuse, the department or designated agency shall report such determination to the district attorney of the county where the abuse occurred within forty-eight hours. The district attorney may investigate and decide whether to initiate criminal proceedings.

(b) The department or the designated agency shall provide or arrange for protective services in accordance with the service plan developed pursuant to the provisions of subsection (a). Protective services shall include, but not be limited to, the following: the capacity to respond to an emergency; protective services case work; the capacity to provide or arrange for a homemaker, home-health aide, transportation, legal assistance, counseling, nutrition services, guardianship and conservatorship, protective order through the court, emergency shelter, foster care, and adult day care services.

The department or the designated agency is authorized to arrange for additional services necessary to assist and protect elderly persons who have been abused, including, but not limited to, the following: medical care, mental health care and emergency financial assistance.

### **Chapter 19A: Section 19. Consent to protective services; interference with provision of services**

Section 19. (a) Any elderly person who requests or affirmatively consents to the receipt of protective services may receive said services. If the person withdraws or refuses consent, the service shall not be provided or continued except as provided in section twenty.

(b) No person shall interfere with the provision of protective services to an elderly person who requests or consents to receive such services. In the event that interference occurs on a continuing basis, the department, a protective services agency, or the public guardian may petition the court to enjoin such interference.

### **Chapter 19A: Section 20. Lack of capacity to consent to protective services; hearings; emergency orders; placement or commitment**

Section 20. (a) If the department or its designated agency has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, the department or its designated agency may petition the court for a finding that the elderly person is incapable of consenting to the provision of protective services. Said petition shall set forth the specific facts upon which the department or the designated agency relied in making the determination. The court shall hold a hearing on the matter within fourteen days of the filing of the petition. The court shall give notice to the elderly person who is the subject of the petition at least five days prior to the date set for the hearing. The elderly person who is the subject of the petition shall have the right to be present, be represented by counsel, present evidence, and examine and cross-examine witnesses. If the elderly person who is the subject of the petition is indigent, the court shall appoint counsel to represent such elderly person. If the court determines that the elderly person lacks the capacity to retain counsel or waive the right to counsel, the court shall appoint a guardian ad litem to represent the interests of such elderly person. If, after hearing, the court determines, based on the preponderance of the evidence, that such elderly person has been abused, is in need of protective services and lacks the capacity to consent and no other person who is authorized to consent is available or willing to consent, the court may appoint a conservator, guardian or other person authorized to consent to the provision of protective services; provided, however, that the court shall establish the least restrictive form of fiduciary representation that

will satisfy the needs of such elderly person. In addition to or in the alternative, the court may issue an order requiring the provision of services. The order shall contain a specific description of the services to be provided and insure that the least restrictive alternatives are utilized. An order for protective services for an elderly person pursuant to this subsection shall remain in effect for a period of six months, unless otherwise stipulated in such order. The court may, for good cause shown, extend an order for protective services. Such extension shall remain in effect for a period of six months, unless otherwise stipulated in such order.

(b) If an emergency exists and the department, its designated agency, a member of the immediate family or a caretaker has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, said department, designated agency, member of the immediate family or caretaker may petition the court for an emergency order of protective services. The court shall give notice to the elderly person who is the subject of the petition at least twenty-four hours prior to the hearing. The court may dispense with notice upon finding that immediate and reasonable foreseeable physical harm to the individual or others will result from the twenty-four hour delay and that reasonable attempts have been made to give such notice. If the elderly person who is the subject of the petition is indigent, the court shall appoint counsel to represent such elderly person. If after the hearing, the court determines, based on the preponderance of the evidence, that the elderly person has been or is being abused, that an emergency exists, and that the elderly person lacks the capacity to consent to the provision of services, the court may order the provision of protective services on an emergency basis. The court shall order only those services necessary to remove the conditions creating the emergency and shall specially designate the authorized services in its order. If the court determines that the elderly person lacks the capacity to retain counsel or waive the right to counsel, the court shall appoint a guardian ad litem to represent the interest of such elderly person following the entry of such emergency order. The order for emergency protective services shall remain in effect for a period not to exceed fourteen days. Said order may be extended for an additional period not to exceed fourteen days if the court finds that the extension is necessary to remove the emergency.

(c) The court shall not order an institutional placement or change of residence unless it finds that no less restrictive alternative will meet the needs of the elderly person. No elderly person may be committed to a mental health facility pursuant to this chapter. The elderly person or his or her court-appointed representative, the department, or the designated agency may petition to have any order issued pursuant to subsection (a) or (b) set aside or modified at any time.

### **Chapter 19A: Section 21. Geriatric evaluation process**

Section 21. (a) Subject to appropriation, the department shall establish a geriatric evaluation process for the purpose of conducting a comprehensive physical, mental, or social evaluation of an elderly person for whom a petition has been filed in a court for appointment of a conservator or guardian, under the provisions of clause (3) of section seventeen, or for an emergency order for protective services.

(b) The evaluation of an elderly person conducted by the geriatric evaluation process shall include at least the following:

- (1) the name and address of the place where the person is residing and of the person or agency, if any, who is providing services at present;
- (2) a description of the treatment and services, if any, presently being provided to the person;
- (3) an evaluation of the person's present physical, mental, and social conditions; and
- (4) a recommendation concerning the least restrictive course of services, care or treatment consistent with the person's needs.



(c) Subject to appropriation, the cost of this evaluation shall be borne by the department.

(d) Such elderly person shall have the right, at his own expense to secure an independent medical and psychological or psychiatric examination relevant to the issue involved in any hearing under this section and to present a report of his independent evaluation or the evaluator's personal testimony as evidence at the hearing.

### **Chapter 19A: Section 22. Financial eligibility guidelines; reimbursements by elderly persons**

Section 22. The department shall establish, by regulation, financial eligibility guidelines which provide a procedure for reimbursement by elderly persons for all or part of cost of protective services. If the department or the designated agency determines, pursuant to section eighteen, that an elderly person who is in need of protective services has sufficient resources to pay for part or all of the cost of protective services, it shall initiate said procedures for reimbursement. If the department or designated agency determines that an elderly person does not have sufficient resources, no reimbursement for any such costs shall be charged to the elderly person.

No elderly person shall be required to reimburse the department for part or all of the cost of protective services unless he or she has been notified prior to the commencement of service provision that a reimbursement will be charged. No elderly person shall be required to reimburse the department for protective services before service provision commences.

### **Chapter 19A: Section 23 Records; disclosure; destruction; regulations; penalties**

Section 23. (a) Except as otherwise provided in this section, all records containing personal data which are created, collected, used, maintained or disseminated pursuant to this chapter shall not be public records, and shall be governed by the provisions of chapter sixty-six A, the notice provisions of section sixty-three of chapter thirty and the enforcement provisions of section three B of chapter two hundred and fourteen.

(b) If the department, any designated agency, or any other agency obligated to make an assessment under this chapter determines that the allegations in a report cannot be substantiated, it shall within 3 years of such determination, either (i) destroy said report and any other records containing personal data created because of the receipt of said report or (ii) physically remove therefrom all personal identifiers; provided, however, that the department, the designated agency or any other agency obligated to make assessments may create and hold whatever statistical records it needs for purposes of planning and reporting, as may be prescribed by regulations adopted by the department pursuant to section two of chapter thirty. Each government agency shall promulgate regulations prescribing the manner of creating and holding its own such statistical records, and the department shall adopt such regulations for itself and any designated agency. Each government agency shall annually report such statistical records to the executive office of elder affairs.

(c) The department, any designated agency, or any other agency obligated to make an assessment under this chapter shall inform in writing an individual, upon his request, whether he is a data subject, as that term is defined in section one of chapter sixty-six A, with respect to records created or maintained under this chapter, and if so, the department or agency shall make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited or excused under the provisions of this or any other statute. In making any disclosure or information to a data subject the department or agency may remove personal identifiers relating to a third person, except where such third person is an officer or employee of a government or non-governmental department or agency obligated to make assessments under this chapter.

(d) Any agent or employee of the department, a designated agency, or any other agency obligated to make an assessment under this chapter who violates the provisions of chapter sixty-six A, as modified by this section, with respect to records created or maintained under this chapter shall be punished by a fine of not more than five hundred dollars, or, if harm shall have resulted to any one whose privacy was sought to be protected by the provision violated, by a fine of not more than one thousand dollars, and, if such agent or employee is employed by the commonwealth, he shall also be subject to administrative disciplinary action pursuant to regulations adopted by the department or agency under section two of chapter thirty A.

(e) No provision of chapter sixty-six A, section one hundred and thirty-five of chapter one hundred and twelve or this section relating to confidential data or confidential communications shall prohibit the department or designated agency from making reports to the district attorney under subsection (b) of section sixteen or subsection (a) of section eighteen, or from providing in such reports to the district attorney any information obtained by the department or a designated agency under section fifteen or section eighteen. No person providing notification or information to a district attorney or testimony in court pursuant to the provisions of this subsection shall be liable in any civil or criminal act by reason of such action.

Nothing herein shall be construed to limit the prosecutorial power of a district attorney.

No provision of chapter sixty-six A, section one hundred and thirty-five of chapter one hundred and twelve, or any other provision of law relating to confidential data or confidential communications shall prohibit the department, by its appropriate employees, or any designated protective services agency, by its appropriate employees from testifying in any judicial proceeding pursuant to subsections (a) and (b) of section twenty, chapter two hundred and one, or chapter two hundred and nine A where the employee has acquired the information which is the subject of his testimony while conducting an assessment in accordance with section eighteen. Such testimony shall not include the identity of the reporter of abuse under section fifteen.

### **Chapter 19A: Section 24. Reports**

Section 24. Within one hundred and twenty days following the end of each fiscal year, the department shall submit a report to the governor, the general court and the public which shall include a description of the activities of the department and all designated agencies pursuant to sections fourteen to twenty-seven, inclusive, during the preceding fiscal year. Said report shall contain statistical information about the number and types of reports received under section fifteen; the results of the assessments and evaluations conducted and the amount, type and costs of services provided under section eighteen; and information on the quality of services provided and the results of such services in terms of alleviating abuse. Said report shall identify problems that may arise in the implementation of this chapter and shall contain the recommendations of the department for action on the part of the legislature.

### **Chapter 19A: Section 25. Rules and regulations**

Section 25. The secretary shall adopt and from time to time revise rules and regulations for the implementation of the provisions of sections fifteen to twenty-four, inclusive.

### **Chapter 19A: Section 26 Powers and responsibilities of other departments or agencies**

Section 26. Nothing in this chapter shall be construed to be a limitation of the powers and responsibilities assigned by law to other departments or agencies.

## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 19C. DISABLED PERSONS PROTECTION COMMISSION.**

Chapter 19C, Section 1. Definitions.

Chapter 19C, Section 2. Establishment of disabled persons protection commission.

Chapter 19C, Section 3. Powers and duties.

Chapter 19C, Section 4. Referral of abuse reports.

Chapter 19C, Section 5. Investigation, evaluation and disclosure of abuse reports; case findings and recommendations; reports of deaths.

Chapter 19C, Section 6. Protective services.

Chapter 19C, Section 7. Petitions for findings of incapacity; emergency orders.

Chapter 19C, Section 8. Abuse of disabled persons under state care; investigations and hearings.

Chapter 19C, Section 9. Completion of hearings; reports; referrals.

Chapter 19C, Section 10. Reporters of abuse; liability; privileged communications.

Chapter 19C, Section 11. Retaliation for reporting abuse.

Chapter 19C, Section 12. Scope of chapter; delay or deferral of investigation.

Chapter 19C, Section 13. Report of death of disabled person.

#### **Chapter 19C: Section 1. Definitions.**

Section 1. As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:

"Abuse", an act or omission which results in serious physical or emotional injury to a disabled person; provided, however, that no person shall be considered to be abused for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

"Caretaker", a disabled person's parent, guardian or other person or agency responsible for a disabled person's health or welfare, whether in the same home as the disabled person, a relative's home, a foster home or any other day or residential setting.

"Commission", the disabled persons protection commission established pursuant to section two.

"Disabled person", a person between the ages of eighteen to fifty-nine, inclusive, who is a person with an intellectual disability as defined by section 1 of chapter 123B, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.

"General counsel" or "counsel", the general counsel of the executive office of health and human services.

"Mandated reporter", any physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, dentist, psychologist, nurse, chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator, guidance or family counselor, day care worker, probation officer, social worker, foster parent, police officer or person employed by a state agency within the executive office of health and human services as defined by section sixteen of chapter six A, or employed by a private agency providing services to disabled persons who, in his professional capacity shall have reasonable cause to believe that a disabled person is suffering from a reportable condition.

"Recommendations", a statement or statements contained in an investigation report prepared pursuant to this chapter and based upon a conclusion that abuse has occurred which sets forth specific action or actions intended by the investigator to remedy said abuse, protect the particular disabled person or persons who are the subject or subjects of the report from further abuse and which responds to the specific protective needs of said disabled person or persons or group of disabled persons similarly situated.

"Reportable condition", a serious physical or emotional injury resulting from abuse, including unconsented to sexual activity.

"State agency", any agency of the commonwealth that provides services or treatment to disabled persons, including private agencies providing such services or treatment pursuant to a contract or agreement with an agency of the commonwealth.

### **Chapter 19C: Section 2. Establishment of disabled persons protection commission; membership; terms; compensation; annual report**

Section 2. There is hereby established a commission for the protection of disabled persons, to be known as the disabled persons protection commission. The purpose of the commission shall be to provide for the investigation and remediation of instances of abuse of disabled persons in the commonwealth. The commission shall consist of three members to be appointed by the governor, one of whom he shall designate as chairman. Members of the commission shall serve for terms of no more than five years. No person shall be appointed to more than one full five-year term on the commission. The term of any commissioner shall not be coterminous with that of another. Members of the commission may be removed by the governor for gross misconduct, substantial neglect of duty, inability to discharge the powers and duties of office, or conviction of a felony. Any vacancy occurring on the commission shall be filled within ninety days by the original appointing authority. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds, and shall be eligible for appointment to one full five-year term. Any member whose term has expired shall continue to serve until such member's successor has been duly appointed and qualified. Members of the commission shall be compensated for work performed for the commission at such rate as the secretary of administration and finance shall determine and shall be reimbursed for their expenses. The commission shall annually report to the general court and the governor concerning the action it has taken; the names and salaries and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on matters within its jurisdiction as may appear necessary. Subject to the provisions of clause (a) of section three, the commission shall employ an executive director and a general counsel. The executive director shall be responsible for the administrative operation of the commission and shall perform such other tasks as the commission shall determine. The general counsel shall be the chief legal officer of the commission.

### **Chapter 19C: Section 3. Powers and duties.**

Section 3. The commission shall have the following powers and duties:--

(a) to employ, subject to appropriation, such staff as shall be necessary to carry out its duties pursuant to this chapter; provided, however, that the commission shall establish written standards for the position of investigator and shall hire investigators whose education and training qualifies them for the position pursuant to the standards established by said commission; and provided

further, that the commission shall take such steps as are necessary to ensure that the conduct of each investigator meets or exceeds such standards. For the purposes of determining the standards established under this section, the commission shall confer with the district attorneys and the attorney general. Such staff shall serve at the pleasure of the commission and shall not be subject to the provisions of chapter thirty-one;

(b) to promulgate, pursuant to the provisions of chapter thirty A, rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of hearings conducted pursuant to section eight;

(c) to provide for the investigation of alleged abuse of disabled persons initiated pursuant to section four;

(d) to designate other state agencies within the executive office of health and human services for the furnishing of protective services in accordance with the provisions of section six;

(e) to issue reports, including findings of facts and recommendations, upon concluding an investigation, and to refer matters upon which investigations have been completed pursuant to section nine;

(f) to take appropriate measures to notify state agencies, disabled persons and other interested parties of the provisions of this chapter;

(g) to maintain files, records of investigations and reports which shall be retained and made available in accordance with the provisions of chapters sixty-six and sixty-six A;

(h) to develop standards for deferral of investigations to the executive office of health and human services and to agencies within the executive office of health and human services under section twelve and in consultation with the secretary of the executive office of health and human services.

(i) to establish within the commission a special investigative unit, which shall have sole responsibility for the initial investigation of all reports of abuse received by the commission in connection with which there is an allegation of criminal conduct. The colonel of the state police shall assign not fewer than five state police officers to the special investigative unit.

The commission shall promulgate rules and regulations establishing procedures to exclude personally identifiable information regarding the subjects of investigations and to carry out the responsibilities of this chapter in such a way as to disclose as little personally identifiable information as possible.

#### **Chapter 19C: Section 4. Referral of abuse reports.**

Section 4. Upon receipt of a report of abuse of a disabled person, the commission shall:--

(a) refer immediately any such reports which allege the occurrence of abuse that is subject to the provisions of sections fourteen to twenty-six, inclusive, of chapter nineteen A, sections seventy-two F to seventy-two L, inclusive, of chapter one hundred and eleven, or sections fifty-one A to fifty-one F, inclusive, of chapter one hundred and nineteen to the appropriate agency for the implementation of measures provided in said sections.

(b) refer immediately any such reports, which allege the occurrence of abuse to a disabled person whose caretaker is a state agency, to an investigator of the commission and the general counsel of the office of the secretary of health and human services, or his designee, within such office and to the department within the executive office of human services which provides or which has contracted for the provision of services to the disabled person. As determined by the commission, either the commission or said department, subject to the oversight of the commission, shall investigate such abuse as provided in section 5. In all cases where a commission investigation is being conducted, the department shall take reasonable steps to avoid unnecessary unwarranted or counterproductive duplication between any internal investigation or inquiry by the department and the commission's investigation, by utilizing the commission's investigation in lieu of an internal investigation conducted by said department.

(c) refer immediately any such reports which allege the occurrence of abuse to a disabled person whose caretaker is other than a state agency to the general counsel or to the department of mental health, in those cases where the disabled person is a person with an intellectual disability or otherwise mentally disabled, or to the Massachusetts rehabilitation commission, in those cases where the disabled person is physically disabled and said counsel or the department of mental health or the department of public health shall immediately, upon such referral, designate an investigator who shall investigate such abuse as provided in section five.

Upon receipt of a report of abuse of a disabled person where the screener, in accordance with written standards established by the commission, determines that the report may contain allegations of criminal conduct, the screener shall immediately refer such report to the special investigative unit which shall conduct an initial evaluation and investigation of the alleged criminal conduct and, upon completion of such evaluation and investigation, shall report the results of such evaluation and investigation to the commissioners who shall, if the special investigative unit has determined that there is reason to believe that a criminal offense has been committed, immediately refer such report, together with any relevant information obtained in such initial investigation, to the attorney general or a district attorney for the county wherein the alleged criminal offense occurred. Upon receipt of such report, the attorney general or district attorney for the county wherein the alleged criminal offense occurred shall contact the commission in order to coordinate the investigation of the matters giving rise to the report. As part of such coordination, the attorney general or the district attorney may request that the commission delay or defer its investigation of the noncriminal matters giving rise to the report; provided, however, that such request shall be granted only where the commission determines that the health and the safety of clients of state agencies or of contract providers shall not be adversely affected thereby and that the commission's or department's ability to conduct a later investigation shall not be unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those in which the commission agrees to delay or defer its investigation, the attorney general or district attorney shall keep the commission informed of the status of the criminal investigation and the commission shall provide to the attorney general or the district attorney any and all information that may be relevant to the criminal investigation. In cases in which the commission agrees to delay or defer its investigation, it shall monitor the progress of the criminal investigation and shall determine, after consultation with such law enforcement agencies, when or whether the commission's investigation should be initiated or resumed.

**Chapter 19C: Section 5. Investigation, evaluation and disclosure of abuse reports; case findings and recommendations; reports of deaths.**

Section 5. Upon receipt of a report of abuse of a disabled person, an investigator designated by the commission, the general counsel, or a department within the executive office of health and human services shall:

(1) Investigate and evaluate the information reported in said reports. Said investigation and evaluation shall be made within twenty-four hours if the commission, counsel or department of mental health or department of public health determines that there is reasonable cause to believe the disabled person's health or safety is in immediate danger from further abuse and within ten calendar days for all other such reports. The investigation shall include a visit to the disabled person's residence and day program, if any, an interview with the disabled person allegedly abused, a determination of the nature, extent and cause or causes of the injuries, the identity of the person or persons responsible therefor and all other pertinent facts. Such determinations and evaluations shall be in writing and shall be immediately forwarded to the commission, to the general counsel and to the department of mental health and the department of public health.

If requested in writing by the commission or by any agency it designates, any mandated reporter required to make a report pursuant to section ten, shall disclose such documents relevant to any investigation being conducted pursuant to this chapter to the commission or to the agency. For the purposes of this section the word "documents" shall include, but not be limited to, any records, charts, reports, reviews, assessments, papers, correspondence and any other data or material.

Any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information shall neither preclude the disclosure of such documents to the commission or its designated agency nor prevent the admission of such documents in any civil or disciplinary proceeding arising out of the alleged abuse or neglect of the disabled person; provided, however, that absent the written consent of an individual to whom the requested documents relate, any information which is protected by the attorney-client privilege, the psychotherapist-client privilege, or the clergy-penitent privilege shall not be subject to such disclosure.

Any party required to provide documents in compliance with the provisions of this section shall not be liable in any civil or criminal action for providing such documents to the commission or any designated agency.

(2) Evaluate the environment of the facility named in the report, if any, and make a written determination of the risk of physical or emotional injury to any other residents or clients in the same facility.

(3) Forward to the commission, the general counsel, the department of mental health and the department of public health within a reasonable time after a case is initially reported pursuant to section four, a summary of the findings and recommendations on each case.

(4) If there is reasonable cause to believe that a disabled person has died as a result of abuse, immediately report said death to the commission, the general counsel, the attorney general, the district attorney for the county in which such death occurred, and to the medical examiner as required by section six of chapter thirty-eight.

(5) Not less than ten days prior to the issuance of a report containing a finding that there is reason to believe that misconduct has occurred, the commission shall provide written notice thereof to the

person or persons alleged to have committed such misconduct and afford such person or persons the opportunity to respond in writing prior to the issuance of said report; provided, that, as determined by the commission, such notice of misconduct will not place the alleged victim at risk of further abuse.

Upon receipt of a report of abuse of a disabled person, or upon receipt of a written determination and evaluation prepared and forwarded to the commission pursuant to the provisions of this section, the commission, notwithstanding any provisions of chapter sixty-six A regarding personal data to the contrary, shall immediately report such conditions and forward said investigation and evaluation report, together with any other material or information which the commission has obtained or received and which is relevant to the alleged abuse, to the district attorney for the county in which the abuse is alleged to have occurred if there is reasonable cause to believe that any of the following conditions exist: (a) a disabled person has been sexually abused or raped, or assaulted or battered, as set forth in chapter two hundred and sixty-five; (b) a disabled person has suffered brain injury, loss or substantial impairment of a bodily function or organ, or substantial disfigurement; or (c) a disabled person has suffered serious bodily injury as a result of a pattern of repetitive actions or inactions by a caretaker.

No person providing notification or information to a district attorney or providing testimony in court pursuant to the provisions of this section, shall be liable in any civil or criminal action by reason of such action.

#### **Chapter 19C: Section 6. Protective services.**

Section 6. The commission, acting through state agencies within the executive office of human services designated by the commission, for the purpose of furnishing protective services, the general counsel acting through state agencies within the executive office of health and human services designated by the secretary of health and human services for the purpose of furnishing protective services, the department of mental health and the department of public health shall, as necessary to prevent further abuse in cases investigated by said commission, counsel or department:

- (1) furnish protective services to a disabled person either with his consent or with the consent of his current guardian;
- (2) petition the court for appointment of a conservator or guardian or for issuance of an emergency order for protective services as provided in section seven; or
- (3) furnish protective services to a disabled person on an emergency basis as provided in section seven.

#### **Chapter 19C: Section 7 Petitions for findings of incapacity; emergency orders; warrants**

Section 7. (a) If the commission, the general counsel, the department of mental health or the department of public health, has reasonable cause after initiation of an investigation to believe that a disabled person is suffering from abuse and lacks the capacity to consent to the provision of protective services, such commission, counsel or department may petition the court for a finding that the disabled person is incapable of consenting to the provision of protective services. Said petition shall set forth the specific facts upon which said commission, counsel or department relied in making such determination. The court shall hold a hearing on the matter within fourteen days of the filing of the petition. The court shall give notice to the disabled person who is the subject of the petition at least five days prior to the date set for



the hearing. The disabled person who is the subject of the petition shall have the right to be present, be represented by counsel, present evidence, and examine and cross-examine witnesses. If the disabled person who is the subject of the petition is indigent, the court shall appoint counsel to represent such disabled person. If the court determines that the disabled person lacks the capacity to waive the right to counsel, the court shall appoint a guardian ad litem to represent the interests of such disabled person. If, after hearing, the court determines, based upon a preponderance of the evidence, that such disabled person has been abused, is in need of protective services and lacks the capacity to consent and no other person who is authorized to consent is available or willing to consent, the court may appoint a conservator, guardian, or other person authorized to consent to the provision of protective services; provided, however, that the court shall establish the least restrictive form of fiduciary representation that will satisfy the needs of such disabled person. In addition to or in the alternative, the court may issue an order requiring the provision of services. The order shall contain a specific description of the services to be provided and insure that the least restrictive alternatives are utilized.

(b) If an emergency exists and said commission, counsel or department, a member of the immediate family or a caretaker has reasonable cause to believe that a disabled person is suffering from abuse and lacks the capacity to consent to the provision of protective services, said commission, counsel or department, member of the immediate family or caretaker may petition the court for an emergency order of protective services. The court shall give notice to the disabled person who is the subject of the petition at least twenty-four hours prior to the hearing. The court may dispense with notice upon finding that immediate and reasonable foreseeable physical harm to the individual or others will result from the twenty-four hour delay and that reasonable attempts have been made to give such notice. If after the hearing, the court determines, based upon a preponderance of the evidence, that the disabled person has been or is being abused, that an emergency exists, and that the disabled person lacks the capacity to consent to the provision of services, the court may order the provision of protective services on an emergency basis. The court shall order only those services necessary to remove the conditions creating the emergency and shall specifically designate the authorized services in its order. The order for emergency protective services shall remain in effect for a period not to exceed seventy-two hours. Said order may be extended for an additional seventy-two hour period if the court finds that such extension is necessary to remove the emergency.

(c) The court shall not order an institutional placement or change of residence unless it finds that no less restrictive alternative will meet the needs of the disabled person. No disabled person may be committed to a mental health facility pursuant to this section. The disabled person or his court appointed representative, said commission, counsel or department may petition to have any order issued pursuant to subsection (a) or (b) set aside or modified at any time.

(d) The courts of the commonwealth are hereby authorized to issue warrants for access to a disabled person upon application of the commission or any state or local law enforcement officer, where there is reasonable cause to believe that a disabled person is subject to abuse and access to such disabled person has been denied unreasonably to the commission or such law enforcement officers for the purpose of investigating the allegation of abuse.

### **Chapter 19C: Section 8. Abuse of disabled persons under state care; investigations and hearings.**

Section 8. If, upon completion of investigation of a report of abuse of a disabled person whose caretaker is a state agency there is reasonable cause to conclude that such abuse did occur, or whenever, upon its own motion, the commission determines that a formal hearing is necessary to

ascertain the scope and remedy of such abuse of disabled persons whose caretaker is a state agency, the commission may, upon a majority vote, initiate a formal investigation, including a hearing, to determine the nature and the extent of such abuse and what recommendations, if any, should be made with respect to such occurrence. Testimony in commission proceedings may, in the discretion of the commission, be recorded and taken under oath. The commission may, in its discretion, permit any party to testify, to call and examine witnesses, to introduce evidence or to cross-examine witnesses. Before testifying, all witnesses shall be given a copy of the regulations governing the commission proceedings. Each witness shall be entitled to be represented by counsel and may refuse to submit evidence or give testimony if such evidence or testimony could tend to incriminate him. All proceedings of the commission shall be public unless the commission votes to go into executive session. Any person whose name is mentioned during a proceeding under this section and who may be adversely affected by any action of the commission under section nine shall have the right to appear personally, to be represented by counsel in connection with the proceedings, to call and examine witnesses, to introduce evidence or to cross-examine witnesses.

### **Chapter 19C: Section 9. Completion of hearings; reports; referrals.**

Section 9. Upon the completion of any formal investigation, the commission shall:--

- (a) issue a written report and refer the same to the appropriate state agency. Such report shall contain findings of fact concerning the alleged occurrence of abuse that was the subject of the investigation, together with a finding as to whether or not such abuse did occur and, if so, what actions are necessary to remedy the causes of such abuse or to prevent its reoccurrence;
- (b) refer any matters for which there is reason to believe that a crime has been committed to the attorney general, the United States attorney or a district attorney for the county wherein such crime was committed;
- (c) refer any matters for which there is reason to believe that employee misconduct has occurred to the state agency employing such person for imposition of disciplinary measures in accordance with the requirements of any applicable law, regulation or collective bargaining agreement; or
- (d) refer any matters for which there is reason to believe that misconduct has occurred by a contractor with a state agency or by such contractor's agent, to the state agency contracting with such party for termination of such contract or for such other action as may be deemed appropriate by such state agency.

### **Chapter 19C: Section 10. Reporters of abuse; liability; privileged communications.**

Section 10. Except when prevented by the constraints of professional privilege as hereinafter provided, mandated reporters shall notify the commission orally of any reportable condition immediately upon becoming aware of such condition and shall report in writing within forty-eight hours after such oral report.

Mandated reporters who have reasonable cause to believe that a disabled person has died as a result of a reportable condition shall immediately report such death, in writing, to the commission, to the district attorney for the county in which such death occurred and to the medical examiner as required by section six of chapter thirty-eight.

Any person may file report if such person has reasonable cause to believe that a disabled person is suffering from abuse or has died as a result thereof.

No mandated reporter shall be liable in any civil or criminal action by reason of submitting a report. No other person making a report shall be liable in any civil or criminal action by reason of submitting a report if such report was made in good faith; provided, however, that no person who abuses a disabled person shall be exempt from civil or criminal liability by reason of their reporting such abuse.

No privilege established, by sections one hundred and thirty-five A and one hundred and thirty-five B of chapter one hundred and twelve, by section twenty or twenty B of chapter two hundred and thirty-three, by court decision or by professional code relating to the exclusion of confidential communications and the competency of witnesses may be invoked to prevent a report by a mandated reporter or in any civil action arising out of a report made pursuant to this chapter; provided, however, that a mandated reporter need not report an otherwise reportable condition if the disabled person invokes a privilege, established by law or professional code, to maintain the confidentiality of communications with such mandated reporter.

Any person required by this section to make oral and written reports, who fails to do so, shall be punished by a fine of not more than one thousand dollars.

### **Chapter 19C: Section 11. Retaliation for reporting abuse.**

Section 11. No person shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against or thereafter take any other retaliatory action against any employee, client or other person for filing a report with the commission or testifying in any commission proceeding or providing information to the commission, the general counsel or the secretary of health and human services or any department, office, commission or other agency within the executive office of health and human services in the course of an investigation of alleged abuse of a disabled person. Any person who willfully violates this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both. In addition, any person who takes such prohibited action against an employee, client or other person may be liable to that employee, client or other person for treble damages, costs and attorney's fees.

A violation of an employee's rights under this section shall constitute a prohibited retaliatory action under subsection (b) of section 185 of chapter 149 if the employee is an employee for purposes of said section 185. The institution of a private action in accordance with this section by any such employee shall be deemed a waiver by the employee of the rights and remedies available to that employee under said section 185, and the institution of such an action under said section 185 shall be deemed a waiver of the rights and remedies available to that employee under this section. A person who willfully files a false report of abuse with the commission or willfully testifies falsely or willfully provides the commission or any designated investigating agency with false information in the course of an investigation or any other commission proceeding shall not be afforded the protections of this section.

Upon receiving a report or other information pursuant to this section, the commission shall inform the person providing the report, testifying or providing information of that person's rights under this section and under section 185 of chapter 149 in writing. The commission may seek enforcement of the criminal provisions of this section.

### **Chapter 19C: Section 12. Scope of chapter; delay or deferral of investigation.**

Section 12. Nothing in this chapter shall be construed to be a limitation of the powers and responsibilities assigned by law to other departments or agencies, nor shall this chapter be construed to relieve any such department or agency of its obligations to investigate and respond appropriately to alleged incidents of abuse. If the commission determines that a formal investigation under section eight, or an investigation under sections four and five, would duplicate or interfere with an ongoing investigation by law enforcement officials concerning possible criminal conduct arising out of the same conduct, it may, in consultation with the secretary of health and human services, delay or defer such formal investigation. The commission may, in consultation with the secretary of health and human services, delay or defer a formal investigation during the pendency of an investigation of the alleged abuse by the state agency at whose facility or program such abuse was alleged to have occurred. Such investigations may be delayed or deferred by the commission only after it has determined: that the health and the safety of clients of state agencies will not be adversely affected thereby; that the commission's ability to conduct a later investigation will not be unreasonably impaired and that the investigation of the incident by another official or agency will be conducted in good faith by an impartial, qualified investigator. The commission shall monitor the progress of such other investigations in order to determine when or whether the commission's investigation of the alleged incident of abuse should be initiated or resumed.

### **Chapter 19C: Section 13. Report of death of disabled person.**

Section 13. Upon the death of any disabled person whose caretaker was a state agency or an agency of any subdivision of the commonwealth or a private agency contracting with the commonwealth, said caretaker agency shall immediately orally notify the commission and local law enforcement officials of such death, and shall forward to the commission and local law enforcement officials a written report of such death within twenty-four hours of the death. Said report shall contain the name of the disabled person, the name of the facility in which that person resided, and the facts and circumstances of the death. The commission shall take all appropriate measures regarding the report pursuant to its authority under this chapter, including investigating the death, and shall determine whether the cause of death is related to abuse. If it is determined that the death is related to abuse, the commission shall conduct further investigation, or shall oversee further investigation, pursuant to the provisions of this chapter.

## **GENERAL LAWS OF MASSACHUSETTS**

### **Chapter 112: Section 12CC Health care providers; inspection of records**

A health care provider who maintains records for a patient treated or examined by such provider shall permit inspection of such records by such patient or an authorized representative of the patient, and upon request a copy of such patient's record shall be furnished upon payment of a reasonable fee, as defined in section 70 of chapter 111 available to such patient or such representative except that no health care provider shall charge a fee any applicant, beneficiary or individual representing said applicant or beneficiary for furnishing a health record to such patient or such representative if the record is requested for the purpose of supporting a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program. A health care provider shall furnish a health record requested pursuant to a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program within thirty days of the request. Any person for whom no fee shall be charged shall present reasonable documentation at the time of such records request that the purpose of such request is to support a claim or appeal under any provision of the Social Security Act or any federal or state financial needs-based benefit program. For purposes of this section, "health care provider" shall mean a person or entity providing medical care or services, including but not limited to, physicians and surgeons, therapists, dentists, nurses, optometrists, chiropractors, psychologists, and podiatrists.

For purposes of this section, in the case of a psychotherapist the term "records" in this section shall mean, at the discretion of the psychotherapist, the patient's entire record maintained by such psychotherapist or a summary of the patient's record. If in the reasonable exercise of his professional judgement, the psychotherapist believes providing the entire record would adversely affect the patient's well-being, in such instances, the psychotherapist shall make a summary of the record available to the patient. If a patient requests the entire record, notwithstanding a determination that providing said record is deemed to adversely affect the patient's well-being, the psychotherapist shall make the entire record available to either the patient's attorney, with the patient's consent, or to such other psychotherapist as designated by the patient. For the purpose of this section the word "psychotherapist" shall mean any person defined as such by section twenty B of chapter two hundred and thirty-three or licensed pursuant to section eighty-four of chapter thirteen.

## **GENERAL LAWS OF MASSACHUSETTS**

Chapter 112, Section 118. Definitions.

Chapter 112, Section 119. Application for license as psychologist; contents and requirements.

Chapter 112, Section 120. Examination of applicants; health service provider certification.

Chapter 112, Section 121. Issuance of license without examination.

Chapter 112, Section 122. Unauthorized practice or use of title; punishment.

Chapter 112, Section 123. Penalties; exemptions.

Chapter 112, Section 124. Temporary licenses.

Chapter 112, Section 125. Exclusion of other professions or occupations from applications of licensing or registration requirements.

Chapter 112, Section 126. Fees.

Chapter 112, Section 127. Term of license; renewal.

Chapter 112, Section 128. Investigations; revocation, suspension, or cancellation of license; notice, hearing, order, review.

Chapter 112, Section 129. Reinstatement of license.

## **REGISTRATION AND LICENSING OF PSYCHOLOGISTS.**

### **Chapter 112: Section 118. Definitions.**

Section 118. As used in sections one hundred and eighteen to one hundred and twenty-nine A, inclusive, the following words, unless the context clearly indicates otherwise, shall have the following meanings:

"Board", the board of registration of psychologists.

"Doctoral degree in psychology", a doctoral degree from a recognized educational institution from a program in psychology as defined by the rules and regulations of the board.

"Health service", the delivery of direct, preventive, assessment and therapeutic intervention services to individuals whose growth, adjustment, or functioning is actually impaired or may be at risk of impairment.

"Health service training program", supervised experience at a site where health services in psychology are normally provided which is part of an organized integrated training program as defined by the rules and regulations of the board.

"Psychologist", an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to practice psychology in the commonwealth.

"Recognized educational institution", a degree-granting college or university which is accredited by a Regional Board or Association of Institutions of higher education approved by the Council on Post Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the commonwealth. Such institutional accreditation shall exist at the time that the doctoral degree is granted or within two years thereafter.

"Supervised health service experience", training at a site where health services in psychology are normally provided, with which the applicant has a formal relationship, and where the applicant is supervised at least one hour for every sixteen hours of training, at least half of which is provided by a

psychologist licensed by the board who is a member of the staff of the training site. At least twenty-five per cent of the applicant's time shall be in direct client contact.

"The practice of psychology", rendering or offering to render professional service for any fee, monetary or otherwise, to individuals, groups of individuals, organizations or members of the public which includes the observation, description, evaluation, interpretation, and modification of human behavior, by the application of psychological principles, methods and procedures, for the purpose of assessing or effecting changes in symptomatic, maladaptive or undesired behavior and issues pertaining to interpersonal relationships, work and life adjustment, personal effectiveness and mental health. The practice of psychology includes, but is not limited to, psychological testing, assessment and evaluation of intelligence, personality, abilities, attitudes, motivation, interests and aptitudes; counseling, psychotherapy, hypnosis, biofeedback training and behavior therapy; diagnosis and treatment of mental and emotional disorder or disability, alcoholism and substance abuse, and the psychological aspects of physical illness or disability; psychoeducational evaluation, therapy, remediation and consultation. Psychological services may be rendered to individuals, families, groups, and the public. For purposes of this definition, the practice of psychology does not include the teaching of psychology, the conduct of psychological research, or the provision of psychological consultation to organizations, unless such teaching research or consultation involves the delivery or supervision of the types of direct services described above, to individuals or groups of individuals.

### **Chapter 112: Section 119. Application for license as psychologist; contents and requirements.**

Section 119. Each person desiring to obtain a license as a psychologist shall make application to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that such person:

- (a) is of good moral character;
- (b) has received a doctoral degree in psychology from a recognized educational institution;
- (c) has engaged for the equivalent of at least two years full time, at least one year of which was subsequent to his receiving the doctoral degree, in psychological employment, teaching, research or professional practice under the supervision of or in collaboration with a licensed psychologist, or one clearly eligible for licensure in the opinion of the board; and
- (d) conducts his professional activities in accordance with accepted standards such as the Ethical Standards of Psychologists of the American Psychological Association. (Amended by 1987, 734, Sec. 2.)

### **Chapter 112: Section 120. Examination of applicants; health service provider certification.**

Section 120. Upon satisfaction of requirements specified in section one hundred and nineteen, the applicant shall pass an examination administered by the board. Examinations shall be conducted at least once a year at a time and place to be designated by the board. Examinations shall be written, oral or both as the board deems advisable. An applicant shall be held to have passed an examination upon the affirmative vote of at least five members of the board. Any person who shall have failed an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

Any licensed psychologist who independently provides or offers to provide to the public, health services, shall be certified as a health service provider by the board. The board shall certify as a health service provider applicants who shall demonstrate that they have at least two years full time of supervised health service experience, of which at least one year is post doctoral and at least one year of which is in a health service training program.

**Chapter 112: Section 121. Issuance of license without examination.**

Section 121. Notwithstanding the provisions of section one hundred and twenty, the board may issue a license without examination to an applicant who presents evidence that he has been licensed or certified as a psychologist by a similar board of another jurisdiction whose standards, in the opinion of the board, are not lower than those required in the commonwealth; or that he holds a diploma from a nationally recognized board or agency approved by the board.

**Chapter 112: Section 122. Unauthorized practice or use of title; punishment.**

Section 122. Any person not licensed to practice psychology who holds himself out to be a psychologist or who uses the title "psychologist" or engages in the practice of psychology shall be punished by a fine of not more than five hundred dollars, or by imprisonment of not more than three months, or both such fine and imprisonment.

**Chapter 112: Section 123. Penalties; exemptions.**

Section 123. The penalties in section one hundred and twenty-two shall not apply to:

(a) persons eligible for licensure under section one hundred and nineteen who provide consultative services for a fee no more than one day a month; or

(b) students of psychology, psychological interns or persons preparing for the practice of psychology under qualified supervision in a recognized training institution or facility; provided, however, that they are designated by such titles as "psychological intern", "psychological trainee" or other title clearly indicating such training status.

**Chapter 112: Section 124. Temporary licenses.**

Section 124. The board may grant a temporary license for a period not to exceed one year to a psychologist with legal residence outside the commonwealth to practice within the commonwealth provided he registers with the board and practices in consultation with, or under the supervision of, a licensed psychologist or possesses qualifications acceptable to the board.

**Chapter 112: Section 125. Exclusion of other professions or occupations from applications of licensing or registration requirements.**

Section 125. Nothing in sections one hundred and eighteen to one hundred and twenty-nine A, inclusive, shall be construed to prevent qualified members of other professions or occupations such as physicians, teachers, members of the clergy, authorized Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment counselors, speech pathologists, audiologists or rehabilitation counselors from doing work of a psychological nature consistent with the



accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed to practice psychology.

Nothing in sections one hundred and eighteen to one hundred and twenty-nine A, inclusive, shall be construed to prevent school psychologists certified by the department of education from practicing and functioning within the scope of their employment in public or private schools or performing as certified school psychologists at any time in private practice or the public sector; provided, however, that they use the title Certified School Psychologists.

### **Chapter 112: Section 126. Fees.**

Section 126. The following fees shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven and shall be collected by the board: (a) application fee; (b) initial license fee; (c) temporary license fee; and (d) biennial renewal fee.

### **Chapter 112: Section 127. Term of license; renewal.**

Section 127. Licenses shall be valid for two years and shall be renewed biennially. On or before April fifteenth every two years the secretary of the board shall forward to each licensed psychologist an application form for renewal. Upon the receipt of the completed form and the renewal fee on or before June first, the secretary shall renew the license for two years commencing July first. Any application for renewal of a license which has expired shall require the payment of a new application fee. Pursuant to the renewal, the applicant shall present to the board documented evidence of the completion of twenty hours of continuing education programs designed to improve the professional competence of the licensee. Such programs shall be completed during the licensed period immediately prior to renewal. In order to qualify, a program shall be approved by the American Psychological Association or such other accreditation program that the board may designate as appropriate.

### **Chapter 112: Section 128. Investigations; revocation, suspension, or cancellation of license; notice, hearing, order, review.**

Section 128. The board shall investigate all complaints relating to the proper practice of psychology by any person licensed under sections one hundred and eighteen to one hundred and twenty-nine A, inclusive.

The board may, after a hearing in accordance with the provisions of chapter thirty A, revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline a psychologist licensed under said sections one hundred and eighteen to one hundred and twenty-nine A, inclusive, upon proof satisfactory to a majority of the board that said psychologist:

- (a) fraudulently procured said license;
- (b) is guilty of an offense against any provision of the laws of the commonwealth relating to the practice of psychology or any rule or regulation adopted thereunder;
- (c) is guilty of conduct that places into question the psychologist's competence to practice psychology, including but not limited to gross misconduct in the practice of psychology or of practicing psychology

fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions;

(d) is guilty of practicing psychology while the ability to practice was impaired by alcohol, drugs, physical disability or mental instability;

(e) is guilty of being habitually drunk or being or having been within a reasonable period of time addicted to, dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

(f) is guilty of knowingly permitting, aiding or abetting an unlicensed individual to perform activities requiring a license for purposes of fraud, deception or personal gain, excluding activities permissible under any provision of laws of the commonwealth or rules or regulations of the board;

(g) has been convicted of a criminal offense which reasonably calls into question his ability to practice psychology; or

(h) is guilty of violating any rule or regulation of the board governing the practice of psychology.

The board shall, after proper notice and hearing, adopt rules and regulations governing the practice of psychology in order to promote the public health, welfare, and safety and to implement the provisions of this section.

No person filing a complaint or reporting or providing information pursuant to this section or assisting the board at its request in any manner in discharging its duties and functions shall be liable in any cause of action arising out of the receiving of such information and assistance; provided, however, that the person making the complaint or reporting or providing said information or assistance does so in good faith and without malice.

If the psychologist is found not to have violated any of the provisions set forth in this section, the board shall forthwith order a dismissal of the charges.

Notice in writing of a contemplated revocation or suspension of a license, or the cause therefor in sufficient particularity, and of the date of hearing thereon, shall be sent by registered or certified mail to the licensee at his last known address at least fifteen days before the date of such hearing. The psychologist against whom a charge is filed shall have a right to appear before the board in person or by counsel, or both, may produce witnesses and evidence on his behalf, and may question witnesses. No license shall be revoked or suspended without such hearing, but the nonappearance of the licensee, after notice, shall not prevent such hearing. All matters upon which the decision is based shall be introduced in evidence at the proceeding. The licensee shall be notified in writing of the board's decision. The board may make such rules and regulations as it deems proper for the filing of charges and the conduct of hearings.

After issuing an order of revocation or suspension the board may also file a petition in equity in the superior court in a county in which the respondent resides or transacts business, or in Suffolk county, to ensure appropriate injunctive relief to expedite and secure the enforcement of its order, pending the final determination.

Any decision the board makes pursuant to this section shall be subject to review in superior court in accordance with the provisions of chapter thirty A.

**Chapter 112: Section 129. Reinstatement of license.**

Section 129. After three years from the date of revocation, an application for reinstatement may be made to the board, which may, upon the affirmative vote of at least five of its members, grant such reinstatement.

## **GENERAL LAWS OF MASSACHUSETTS**

### **Chapter 112: Section 129A. Confidential communications.**

Section 129A. All communications between a licensed psychologist and the individuals with whom the psychologist engages in the practice of psychology are confidential. At the initiation of the professional relationship the psychologist shall inform the patient of the following limitations to the confidentiality of their communications. No psychologist, colleague, agent or employee of any psychologist, whether professional, clerical, academic or therapeutic, or a graduate of, or student enrolled in, a doctoral degree program in psychology at a recognized educational institution as that term is defined in section 118, who is working under the supervision of a licensed psychologist, shall disclose any information acquired or revealed in the course of or in connection with the performance of the psychologist's professional services, including the fact, circumstances, findings or records of such services, except under the following circumstances: (a) pursuant to the provisions of section twenty B of chapter two hundred and thirty-three or any other law; (b) upon express, written consent of the patient; (c) upon the need to disclose information which protects the rights and safety of others if:

(1) the patient presents a clear and present danger to himself and refuses explicitly or by his behavior to voluntarily accept further appropriate treatment. In such circumstances, where the psychologist has a reasonable basis to believe that a patient can be committed to a hospital pursuant to chapter one hundred and twenty-three, he shall have a duty to seek said commitment. The psychologist may also contact members of the patient's family or other individuals if in the psychologist's opinion, it would assist in protecting the safety of the patient; or

(2) the patient has communicated to the psychologist an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if said psychologist makes reasonable efforts to take one or more of the following actions:

- (a) communicates a threat of death or serious bodily injury to a reasonably identified person;
- (b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;
- (c) arranges for the patient to be hospitalized voluntarily;
- (d) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law.

(3) the patient has a history of physical violence which is known to the psychologist and the psychologist has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the psychologist shall have a duty to take reasonable precautions. A psychologist shall be deemed to have taken reasonable precautions if said psychologist makes reasonable efforts to take one or more of the following actions:

- (a) communicates a threat of death or serious bodily injury to the reasonably identified person;
- (b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential

victim resides;

(c) arranges for his patient to be hospitalized voluntarily;

(d) takes appropriate steps to initiate proceedings for involuntary hospitalization pursuant to law.

(4) nothing contained herein shall require a psychologist to take any action which, in the exercise of reasonable professional judgment, would endanger himself or increase the danger to a potential victim or victims.

(5) the psychologist shall only disclose that information which is essential in order to protect the rights and safety of others.

(d) in order to collect amounts owed by the patient for professional services rendered by the psychologist or his employees; provided, however, that the psychologist may only disclose the nature of services provided, the dates of services, the amount due for services and other relevant financial information; provided, further, that if the patient raises as a defense to said action substantive assertions concerning the competence of the psychologist or the quality of the services provided, the psychologist may disclose whatever information is necessary to rebut such assertions; or

(e) in such other situations as shall be defined in the rules and regulations of the board.

No provision of this section shall be construed to prevent a nonprofit hospital service or medical service corporation from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section shall be construed to prevent access to any such records in connection with any coordination of benefits, subrogation, workers' compensation, peer review, utilization review or benefit management procedures applied and implemented in good faith.

### **Chapter 112: Section 129B. Contractual restrictions on right to practice**

Section 129B. A contract or agreement which creates or establishes the terms of a partnership, employment, or any other form of professional relationship with a psychologist licensed under this chapter, which includes a restriction of the right of the psychologist to practice in any geographic area for any period of time after termination of the partnership, employment or professional relationship shall be void and unenforceable with respect to the restriction; but, nothing herein shall render void or unenforceable the remainder of the contract or agreement.

### **Chapter 112: Section 65A. Unlicensed practice of trade; penalties**

Section 65A. Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty not to exceed \$1,000 for the first violation and a civil administrative penalty not to exceed \$2,500 for a second or subsequent violation upon a person who, without holding the required license, certificate, registration or authority, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required. Nothing in this section shall affect, restrict,

diminish or limit any other penalty or remedy provided by law. A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.

## GENERAL LAWS OF MASSACHUSETTS

### CHAPTER 119. PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM.

#### PROTECTION OF CHILDREN.

- Chapter 119, Section 1. Declaration of policy; purpose.
- Chapter 119, Section 2--20. Repealed, 1972, 785, Sec. 6.
- Chapter 119, Section 21. Definitions applicable to secs. 22—51F.
- Chapter 119, Section 21A. Admissibility of evidence; qualified experts
- Chapter 119, Section 22. Visitation of family foster homes; removal of child; discharge of child to parent or legal guardian.
- Chapter 119, Section 23. Responsibility of department to provide foster care for children; assignment of support rights; sibling visitation rights.
- Chapter 119, Section 23A. Children born to inmates of correctional institutions or jails; care and custody.
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- Chapter 119, Section 24. Procedure to commit child to custody or other disposition.
- Chapter 119, Section 25. Hearing; custody of child.
- Chapter 119, Section 26. Procedure at hearing; order of commitment; reimbursement of commonwealth; sibling visitation rights; petition for review.
- Chapter 119, Section 26A. Registration of interest for foster care placement; criminal record review
- Chapter 119, Section 26B. Grandparent visitation; sibling visitation; appeal of decision to deny visitation
- Chapter 119, Section 26C. Summary of foster care providers' employment
- Chapter 119, Section 27. Appeals; procedure; notice of right of appeal; time limits.
- Chapter 119, Section 28. Orders for payment of support; who may bring action; expiration of order or judgment.
- Chapter 119, Section 29. Counsel for child; appointment.
- Chapter 119, Section 29A. Legal fees of minors in criminal proceedings; liability of parents.
- Chapter 119, Section 29B. Determination of future status of committed children; orders; appeals.
- Chapter 119, Section 29C. Judicial certification of need to remove child from home.
- Chapter 119, Section 30, 31. Repealed, 1961, 396, Sec. 5.
- Chapter 119, Section 32. Placement of children in private families.
- Chapter 119, Section 33. Placement of children in family home care.
- Chapter 119, Section 33A. [ There is no 119:33A.]
- Chapter 119, Section 33B. Placement in family home care of juvenile who has or may have committed a sexual offense or arson.
- Chapter 119, Section 34. Transportation of children in patrol wagons.
- Chapter 119, Section 35. Furnishing parent or guardian information as to child; permission to visit; petition; notice.
- Chapter 119, Section 36. Bringing child into commonwealth with view to adoption, custody or care; permit; application; bond.
- Chapter 119, Section 37. Rules and regulations of department.
- Chapter 119, Section 38. Closed hearings; publication of names.
- Chapter 119, Section 38A. Petitions for order to not resuscitate or to withdraw life-sustaining medical treatment; required recommendations; appeals
- Chapter 119, Section 39. Abandonment of infant under age of ten.
- Chapter 119, Section 39 ½: Placement of a newborn into foster care
- Chapter 119, Section 39A--39C. Repealed, 1973, 1076, Sec. 6.
- Chapter 119, Section 39D. Visitation rights to certain grandparents of unmarried minor children.
- Chapter 119, Section 39E. Petitions seeking determination that child is in need of services; jurisdiction; standing.
- Chapter 119, Section 39F. Right to counsel.
- Chapter 119, Section 39G. Hearing; determination of child in need of services.
- Chapter 119, Section 39H. Arrest of child; notification to juvenile court; temporary placement; bail; detention; limitations; right of appeal.

Chapter 119, Section 39I. Appeal; trial de novo, with or without jury; rights and procedures.  
Chapter 119, Section 39J. Payment of expenses for services under secs. 39E—39I by counties.  
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#### PROVISIONS COMMON TO ALL PROCEEDINGS AGAINST CHILDREN

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#### CRIMINAL PROCEEDINGS.



Chapter 119, Section 73. Repealed, 1964, 308, Sec. 5.  
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Chapter 119, Section 75. Repealed, 1975, 840, Sec. 2A.  
Chapter 119, Section 76--82. Repealed, 1964, 308, Sec. 5.  
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## **CHAPTER 119. PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM.**

### **PROTECTION OF CHILDREN.**

#### **Chapter 119: Section 1. Declaration of policy; purpose.**

Section 1. It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the protection and care of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development.

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, and to assure good substitute parental care in the event of the absence, temporary or permanent inability or unfitness of parents to provide care and protection for their children.

The health and safety of the child shall be of paramount concern and shall include the long-term well-being of the child.

In all matters and decisions by the department, the policy of the department, as applied to children in its care and protection or children who receive its services, shall be to define best interests of the child as that which shall include, but not be limited to, considerations of precipitating factors and previous conditions leading to any decisions made in proceedings related to the past, current and future status of the child, the current state of the factors and conditions together with an assessment of the likelihood of their amelioration or elimination; the child's fitness, readiness, abilities and developmental levels; the particulars of the service plan designed to meet the needs of the child within his current placement whether with the child's family or in a substitute care placement and whether such service plan is used by the department or presented to the courts with written documentation; and the effectiveness, suitability and adequacy of the services provided and of placement decisions, including the progress of the child or children therein. The department's considerations of appropriate services and placement decisions shall be made in a timely manner in order to facilitate permanency planning for the child.

In all department proceedings that affect the child's past, current and future placements and status, when determining the best interests of the child, there shall be a presumption of competency that a child who has attained the age of 12 is able to offer statements on his own behalf and shall be provided with timely opportunities and access to offer such statements, which shall be considered by the department if the child is capable and willing. In all matters relative to the care and protection of a child, the ability, fitness and capacity of the child shall be considered in all department proceedings.

For purposes of this section, the words "all department proceedings" shall include departmental hearings and proceedings but shall not include a court proceeding even when the department is a party.

**Chapter 119: Section 2--20. Repealed, 1972, 785, Sec. 6.**

**Chapter 119: Section 21. Definitions applicable to Secs. 21 to 51H**

Section 21. As used in sections 21 to 51H, inclusive, the following words shall have the following meanings, unless the context clearly otherwise requires:--

"51A report", a report filed with the department under section 51A that details suspected child abuse or neglect.

"Child", a person under the age of 18.

"Child advocate", the child advocate appointed under chapter 18C.

"Child in need of services", a child between the ages of 6 and 17 who: (a) repeatedly runs away from the home of a parent or legal guardian; (b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent's or legal guardian's ability to adequately care for and protect the child; (c) repeatedly fails to obey lawful and reasonable school regulations; or (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter.

"Commissioner", the commissioner of children and families.

"Custody", the power to: (1) determine a child's place of abode, medical care and education; (2) control visits to a child; and (3) consent to enlistments, marriages and other contracts otherwise requiring parental consent. If a parent or guardian objects to the carrying out of any power conferred by this paragraph, that parent or guardian may take application to the committing court and the court shall review and make an order on the matter.

"Department", the department of children and families.

"Mandated reporter", a person who is: (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker; (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licenser of the department of early education and care or school attendance officer; (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer; (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (vi) the child advocate.

"Parent", a mother or father, unless another relative has been designated as a parent as defined in section 1 of chapter 118 for the purposes of receiving benefits from the department of transitional assistance.

"Relative", the father or mother of a child; a stepfather, stepmother, stepbrother, stepsister, or any blood relative of a child, including those of the half blood, except cousins who are more distantly related than first cousins; any adoptive relative of equal propinquity to the foregoing; or a spouse of any such persons.

"Serious bodily injury", 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.

**Chapter 119: Section 21A. Admissibility of evidence; qualified experts**

Evidence in proceedings under sections 21 to 51H, inclusive, shall be admissible according to the rules of the common law and the General Laws and may include reports to the court by any person who has made an investigation of the facts relating to the welfare of the child and is qualified as an expert according to the rules of the common law or by statute or is an agent of the department or of an approved charitable corporation or agency substantially engaged in the foster care or protection of children. Such person may file with the court in a proceeding under said sections 21 to 51H, inclusive, a full report of all facts obtained as a result of such investigation. The person reporting may be called as a witness by any party for examination as to the statements made in the report. Such examination shall be conducted as though it were on cross-examination. Evidence may include testimony of foster parents or pre-adoptive parents concerning the welfare of a child if such child has been in the care of the foster or pre-adoptive parents for 6 months or more, and may include the testimony of the child if the court determines that the child is competent and willing, after consultation with counsel, if any, to testify.

**Chapter 119: Section 22. Visitation of family foster homes; removal of child; discharge of child to parent or legal guardian**

Section 22. An agent of the department shall visit each family foster home, not supervised and approved by a licensed placement agency, at least once a year and may be authorized by the department to remove a child to its care if, in its judgment, the welfare of the child or its protection from neglect or abuse so require. An agent who is refused entry or hindered in the removal of such child may make complaint, on oath, to a justice of the court having jurisdiction, who may thereupon issue a warrant authorizing the agent to obtain sufficient aid and, at any reasonable time, enter the building designated, and any part thereof, to investigate the treatment and condition of a child found there and to remove the child as herein provided. The department shall take the child temporarily into its care, immediately notify the child's parent or legal guardian and, upon request, discharge the child to a parent or legal guardian. If the parent or legal guardian is unable or refuses to make suitable provisions for the child, the department shall make lawful provisions for the child's care under section 23 or 24.

**Chapter 119: Section 23. Responsibility of department to provide foster care for children; placement with relatives; funeral expenses; child profile form; extension of support of child until 22 years of age; assignment of support rights; assistance to foster care families**

Section 23. (a) The department shall have the responsibility, including financial responsibility, for providing foster care for children through its own resources or by use of appropriate voluntary agencies, according to the rules and regulations of the department, in the following instances:--

(1) If a child, parent, guardian, or any person acting on behalf of a child, applies for foster care, the department may accept a child who, in the judgment of the department, is in need of foster care. Such acceptance shall entail no abrogation of parental rights or responsibilities, but the department may accept from parents a temporary delegation of certain rights and responsibilities necessary to provide the foster

care for a period of time under conditions agreed upon by both and terminable by either. If the department determines that continued placement beyond 6 months is required for reasons unrelated to parental unfitness and the parent consents to continued placement, the department may file a petition for care and responsibility in the probate court on behalf of a child accepted into foster care. At the initial hearing on the petition, the court shall determine whether continued placement with the department is in the child's best interests and shall issue its determination, including its rationale, in written form. The allowance of the petition shall not abrogate a parent's right to make decisions on behalf of the child, but the department may accept from the parent a temporary delegation of certain rights and responsibilities necessary to continue to provide foster care for the child under conditions agreed upon by both and terminable by either. Notwithstanding any general or special law to the contrary, a permanency hearing shall be held within 60 days of the transfer of responsibility by order of the probate court or within 12 months of initial placement into foster care with the department, whichever date is later. The hearing shall be conducted as provided in section 29B.

(2) If a parent or parents apply for voluntary surrender of custody of a child for purposes of giving consent to adoption, the department may accept the child following the procedure described in clause (1).

(3) If a child is without proper guardianship due to death, unavailability, incapacity or unfitness of a parent or guardian or with the consent of a parent or parents, the department may seek, and shall accept, an order of the probate court granting responsibility for the child to the department. Such responsibility shall include the right to: (i) determine the child's abode, medical care and education; (ii) control visits to the child; (iii) consent to enlistments, marriages and other contracts requiring parental consent; and (iv) consent to adoption only when it is expressly included in an order of the court. In making an order, the probate court shall consider section 29C and shall make the written certification and determinations required by said section 29C. If a child is in the care of the department of mental health or the department of developmental services, the responsibility for the child as described in this section and all rights therein contained shall continue in the department. If a person with an intellectual disability who has been declared mentally incompetent was the responsibility of the department prior to reaching the age of 18, the department shall continue to exercise responsibility for that person until that person is declared to be no longer legally incompetent.

(4) The department shall accept on commitment from the juvenile court any child declared in need of foster care under section 26 or declared to be a child in need of services under section 39G.

(5) Any child who is left in any place and who is seemingly without a parent or legal guardian available shall be immediately reported to the department, which shall proceed to arrange care for that child temporarily and shall forthwith cause search to be made for that child's parent or guardian. If a parent or guardian cannot be located or is unable or refuses to make suitable provision for the child, the department shall make such lawful provision it deems in the best interest of that child as provided under this chapter.

(6) If the department has in its care a child whose parent or parents have consented to the child's adoption and the department has been unable to place that child in an adoptive home within 60 days of receipt of the consent, the department shall so notify all children's foster care agencies in the commonwealth licensed to place children for adoption. The notice shall request that each such agency attempt to find an adoptive home for such child. If 1 of the agencies locates an adoptive home for this child, the department shall cooperate with the agency in the placement of the child in this home and in the supervision of the placement during the 1 year waiting period. Any person in whose home a child has been placed by the department shall also be informed by the department if the child has become eligible for adoption, and this person may request consideration as a prospective adoptive parent.

(7) A temporary shelter care facility program or a group care facility, licensed under chapter 15D, may provide temporary shelter for a 72-hour period to a child without parental consent, if the child's welfare

would be endangered if such shelter were not immediately provided. At the expiration of the 72-hour period, the licensee shall: (i) secure the consent of a parent or guardian to continued custody and care; (ii) refer the child to the department for custody and care; or (iii) refuse to provide continued care and custody to the child.

(b) The department shall develop guidelines and standards for the placement of children in foster care. The guidelines and standards shall be reviewed by the executive office of health and human services and the child advocate.

(c) Whenever the department places a child in foster care, the department shall immediately commence a search to locate any relative of the child or other adult person who has played a significant positive role in that child's life in order to determine whether the child may appropriately be placed with that relative or person if, in the judgment of the department, that placement would be in the best interest of the child.

The department shall also seek to identify any minor sibling or half-sibling of the child and attempt to place these children in the same foster family if, in the judgment of the department, that placement would be in the best interests of the children.

(d) The department may pay a sum not to exceed \$1,100 for the funeral and burial of a child in its care; provided that the cost of the funeral and burial does not exceed \$1,500 and there are insufficient resources to pay for the cost of the funeral and burial. Any resources of the child shall be deducted from the maximum cost of the funeral and burial allowable hereunder and the difference, subject to the limitation set forth in this subsection, shall be paid by the department.

(e) If a child is placed in or transferred to a foster home, a completed child profile form shall precede or accompany the child to the foster home. In the case of an emergency placement, the department, the department of youth services, the department of mental health, other departments of the commonwealth responsible for the placement of foster children, or a placement agency shall immediately provide a brief verbal or written statement describing the child's outstanding problem behaviors and mental and emotional problems and shall provide the child profile form within 10 days to the foster parents.

The department shall develop a child profile form to be used by all other departments of the commonwealth or placement agencies that shall contain the child profile and any other relevant information necessary to the care, well-being, protection and parenting of the child by the foster parents, including, but not be limited to: (i) a history of the child's previous placements and reasons for placement changes; (ii) a history of the child's problem behaviors and mental and emotional problems; (iii) educational status and school related problem behaviors; and (iv) any other necessary psychological, educational, medical or health information.

The child profile form shall immediately be prepared by the department of the commonwealth which is granted care and custody of the child at the time such care and custody is granted.

(f) The department may continue its responsibility as provided in this section for any person under 22 years of age: (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person. The purposes and conditions of such responsibility may be reviewed and revised or terminated by either the person or the department. If, after termination, the person requests that the department renew its responsibility therefore, the department shall make every reasonable attempt to provide a program of support which is acceptable to the person and which permits the department to renew its responsibility.

The department shall report annually to the child advocate, chairs of the joint committee on children, families and persons with disabilities and the senate and house committees on ways and means on the numbers of persons it serves and declines to serve under this subsection.

(g) The department shall obtain and provide to the IV-D agency, as set forth in chapter 119A, an assignment of support rights on behalf of each child receiving foster care maintenance payments under Title IV, Part E, of the Social Security Act. The department shall be subrogated to the rights of each such child and shall obtain and provide to the IV-D agency information that may be reasonably necessary to enforce the department's right including, but not limited to, the following information: the child's name, date of birth, place of birth, Social Security number, address and benefit level and, if known, each parent's name, date of birth, place of birth, Social Security number, most recent address and most recent employer. The department shall immediately notify the IV-D agency when a child whose rights to support are subrogated no longer receives foster care maintenance payments under said Title IV, Part E, of the Social Security Act.

(h) The department shall, subject to appropriation, provide assistance to foster care families which includes maintenance payments at the daily rate recommended and periodically adjusted by the United States Department of Agriculture. The department shall periodically review the level of assistance including maintenance payments provided to adoptive and guardianship families and may, subject to appropriation, and consistent with federal law and policy, adjust such assistance as warranted by the financial circumstances of the family, the needs of the child or the rate of inflation.

The department shall report annually on September 1, to the senate and house committees on ways and means and the joint committee on children, families and persons with disabilities on the amounts expended to provide to foster care, adoptive and guardianship families financial and other assistance including, but not limited to, payments to provide for the care of children.

(i) The department, in consultation with the executive office of public safety and security, shall work with the department of state police and municipal police departments to ensure that adequate efforts are being made to identify and to provide for the immediate protection, care and custody of the minor children of a person arrested or placed in custody by police officers in the performance of their official duties.

### **Chapter 119: Section 23A. Children born to inmates of correctional institutions or jails; care and custody.**

Section 23A. Any child born to an inmate of the Massachusetts Correctional Institution, Framingham, or of the Industrial School for Girls at Lancaster, or of a jail or a house of correction, shall be accepted by the department, and any child whose mother is committed to the Massachusetts Correctional Institution, Framingham, to a jail or a house of correction, or to the custody of the youth service board, may be accepted by the department. Thereupon the department in consultation with the commissioner of correction or the chairman of the youth service board shall make such provision at said place of commitment or elsewhere for the care of said child as may seem to be for the best interests of said child.

### **Chapter 119: Section 23B. Services to unwed mothers.**

Section 23B. The department may, through its own resources or the resources of other appropriate agencies, provide services to mothers bearing children out of wedlock.

### **Chapter 119: Section 24. Procedure to commit child to custody or other disposition; notice and summons; emergency order transferring custody; investigation; abandoned children**

Section 24. 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.

### **Chapter 119: Section 25. Hearing; custody of child**

Section 25. The petition under section 24 may be heard on the merits when a child is taken into custody and brought before the court or may be continued to a time fixed for hearing. Pending the hearing on the merits, the court may allow the child to be placed in the care of some suitable person or licensed agency providing foster care for children or may commit the child to the custody of the department. If the court commits a child to the custody of the department, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C.

**Chapter 119: Section 26. Procedure at hearing; order of commitment; petition to dispense with parental consent to adoption; reimbursement of commonwealth; petition for review**

Section 26. (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.

### **Chapter 119: Section 26A. Registration of interest for foster care placement; criminal record review**

Section 26A. When deciding whether to approve or reject a registration of interest for foster care placement, the department shall conduct a review of any misdemeanor offense discovered through a criminal offender record information search conducted under section 172B of chapter 6 in order to assist the department in accurately evaluating whether the mere existence of the offense has a substantial effect on the applicant's current or future ability to assume and carry out the responsibilities of a foster parent in such a manner that the rights of the child to sound health and normal physical, mental, spiritual and moral development are insured. The review shall include, but not be limited to, a review of the following: (i) the time that has elapsed between the date of the offense and the filing of the registration of interest; (ii) the seriousness and specific circumstances of the offense; (iii) the number and nature of other offenses; (iv) the age of the offender at the time of the offense; (v) the findings and recommendations of the family resource worker assigned by the department to discuss the facts surrounding the misdemeanor with the applicant;

(vi) the recommendations given to the family resource worker by personal or employment references chosen by the applicant or received otherwise; (vii) the current and future needs of the child to be placed and the probable effect that the misdemeanor would have on the applicant's ability to fulfill those needs; (viii) any reports or recommendations received by the department from the applicant's parole or probation officer if 1 was assigned; (ix) a copy of the police report pertaining to the offense in question if obtainable within a reasonable period of time or discussions with a police officer familiar with the facts surrounding the offense; and (x) discussions with the child to be placed regarding his current and past relationship with the applicant, unless these discussions are inappropriate. Nothing in this section shall affect the discretion of the department to approve or reject the registration of interest for foster care placement.

### **Chapter 119: Section 26B. Grandparent visitation; sibling visitation; appeal of decision to deny visitation**

Section 26B. (a) Whenever a child is placed in family foster care, the court and the department shall ensure that a grandparent of a child who is in the department's care or is the subject of a petition under this chapter shall, upon that grandparent's request, have access to reasonable visitation and that the department establish a schedule for that visitation, unless it is determined by the court or the department that grandparent visitation is not in the child's best interests. In determining the best interests of the child, the court or the department shall consider the goal of the service plan and the relationship between the grandparent and the child's parents or legal guardian. Upon recommendation by the department or on its own accord, the court may establish reasonable conditions governing grandparent visitation, including requiring that the grandparent be restrained from revealing the whereabouts of the child's placement.

A grandparent of a child who is placed with the department voluntarily under clause (1) of subsection (a) of section 23 or placed in the custody of the department under an adoption surrender under section 2 of chapter 210, who is denied grandparent visitation by the department, may appeal through the department's fair hearing process. A grandparent may appeal the decision reached through the department's fair hearing process by filing a petition in the probate and family court for grandparent visitation. That grandparent shall have the right to court review by trial de novo.

A grandparent of a child who is the subject of a petition under this chapter and placed in the custody of the department may file a petition for visitation in the court which has committed the child to the custody of the department.

(b) The court or the department shall, whenever reasonable and practical and based upon a determination of the best interests of the child, ensure that children placed in foster care shall have access to and visitation with siblings in other foster or pre-adoptive homes or in the homes of parents or extended family members throughout the period of placement in the care and custody of the department, or after such placements, if the children or their siblings are separated through adoption or long-term or short-term placements in foster care.

The court or the department shall determine, at the time of the initial placements wherein children and their siblings are separated through placements in foster, pre-adoptive or adoptive care, that sibling visitation rights be implemented through a schedule of visitations or supervised visitations, to be arranged and monitored through the appropriate public or private agency, and with the participation of the foster, pre-adoptive or adoptive parents, or extended family members, and the child, if reasonable, and other parties who are relevant to the preservation of sibling relationships and visitation rights.

A child in foster care or sibling of a child placed voluntarily under clause (1) of subsection (a) of section 23 or under an adoption surrender under section 2 of chapter 210, who are denied visitation rights by the department, may appeal through the department's fair hearing process. The child or sibling may appeal the decision reached through the department's fair hearing process by filing a petition in the probate and family court for visitation. That child or sibling shall have the right to court review by trial de novo.

For children in the custody of the department pursuant to petition under this chapter, a child, sibling, parent, legal guardian or the department may file a petition for sibling visitation in the court committing the child to the custody of the department.

Periodic reviews shall evaluate the effectiveness and appropriateness of sibling visitations.

Any child over 12 years of age may request visitation with siblings who have been separated and placed in care or have been adopted in a foster or adoptive home other than where the child resides.

(c) A parent: (i) against whom a decree to dispense with consent to adoption has been entered under clause 4 of subsection (b) of section 26 or section 3 of chapter 210 or (ii) who has signed a voluntary adoption surrender under section 2 of chapter 210 shall not have the rights provided under this section as to the child who is the subject of that decree or surrender.

(d) A child, parent, guardian, grandparent or the department may appeal a decision or order of the trial court to the appeals court under this section if such person or the department is a party thereto. The claim of appeal shall be filed in the office of the clerk or register of the trial court within 30 days following the court's decision or order. Thereafter, the appeal shall be governed by the Massachusetts Rules of Appellate Procedure.

#### **Chapter 119: Section 26C. Summary of foster care providers' employment**

Section 26C. The department shall provide all children's foster care agencies acting as agents of the department and that employ foster care providers, a summary of the record of any such foster care provider's employment as a foster care provider as compiled by the department. Said summary shall include names and contacts of all other agencies that employed such person as a foster care provider, the tenure of each such employment as a foster care provider, the reasons for ending each such employment, and any other information the department deems relevant and necessary to determine the employee's fitness to continue to be employed as a foster care provider. The department shall require any foster care agency that employs foster care providers and with which it contracts to supply the information included in such summary to the department and maintain this information in a database. The department shall consult the department of early education and care if necessary to facilitate the collection of this information.

#### **Chapter 119: Section 27. Appeals; procedure; notice of right of appeal; time limits**

Section 27. A child, parent, guardian or person appearing in behalf of such child, or the department, may appeal from the adjudication of the court and from any order of commitment made as a result of the adjudication under the provisions of section twenty-six to the appeals court. The trial justice entering the adjudication or order of commitment shall, prior to said adjudication, or within ten days thereafter, file detailed findings of fact and conclusions of law. Pending the appeal, the child may be committed to the custody of the department or placed in the care of some suitable person or licensed children's foster care agency. The district court or juvenile court where the order of adjudication was entered shall retain jurisdiction to and may enter any order for the needs of the child. The court shall notify the child, parent, guardian or person appearing in behalf of such child of the right of appeal at the time of adjudication and also at the time of commitment.

The claim of appeal under this section shall be filed in the office of the clerk of the said division of the district court department or the division of the juvenile court department within 30 days of the entry of the adjudication or order of commitment by the court. The completion of said appeal shall be governed by the Massachusetts rules of appellate procedure.

### **Chapter 119: Section 28. Orders for payment of support; who may bring action; expiration of order or judgment**

Section 28. (a) During the pendency of an action brought under section 24, temporary orders providing for the support of a child may be entered. The court may thereafter enter a judgment against the party chargeable with support. When the court makes an order of support on behalf of a party, and that party is not covered by a private group health insurance plan, the court shall determine whether the person chargeable with support has private health insurance or a group plan available to him through an employer or organization that may be extended to cover the party for whom support is ordered. When the court has determined that the person chargeable with support has this insurance, such court shall include in the order or judgment a provision relating to the insurance. Any such order of support shall conform to and be enforced under section 12 of chapter 119A.

(b) Actions under this section to establish support of a child may be commenced by a parent, whether a minor or not; by the child; by the child's guardian, next of kin or other person standing in a parental relationship to the child; by the authorized agent of the department of children and families or any agency licensed under chapter 15D if the child is in its custody or is or was a recipient of any type of public assistance by the IV-D agency as set forth in chapter 119A on behalf of the department of transitional assistance, the department of children and families, the division of medical assistance, or any other public assistance program of the commonwealth. In the event that someone other than the IV-D agency commences the action, if the parent or child is or was a recipient of any type of public assistance, the court shall notify the IV-D agency of the pendency of the action and the IV-D agency shall be permitted to intervene in the action.

(c) An order, or judgment of support under this section, may be entered notwithstanding the default of the person chargeable with support or his failure to appear personally.

(d) In determining the amount of current support to be paid, the court shall apply the child support guidelines established by the chief administrative justice of the trial court, or, in the absence of such standards, shall consider the factors set forth in section 32 of chapter 209.

(e) The person chargeable with support shall comply with this order, or judgment until it is dismissed or expires. When an action brought under section 24 is dismissed or a final order of commitment is entered, the order or judgment of support shall expire 6 months after the judgment of dismissal or final order of commitment. At the time of the dismissal or final order of commitment, the court shall notify the parties and the IV-D agency, as set forth in chapter 119A, of the expiration date of the support order or judgment.

### **Chapter 119: Section 29. Counsel for child or adult with an intellectual disability under responsibility of department; appointment**

Section 29. Whenever an adult with an intellectual disability who is the responsibility of the department or a child is before any court under clause (3) of subsection (a) of section 23, or sections 24 to 27, inclusive, this section or section 29B, that adult or child shall have and be informed of the right to counsel at all hearings and that the court shall appoint counsel for that adult or child if the adult or child is not able to retain counsel.

Whenever the department or a licensed child placement agency is a party to child custody proceedings, the parent, guardian or custodian of the adult with an intellectual disability or the child: (i) shall have and be informed of the right to counsel at all such hearings, including proceedings under sections 5 and 14 of chapter 201, and that the court shall appoint counsel if he is financially unable to retain counsel; and (ii) shall have and be informed of the right to a service plan or case plan for the adult with an intellectual

disability or child and his family which complies with applicable state and federal laws and regulations for these plans. The probate and family court and the juvenile court departments of the trial court shall establish procedures for: (i) notifying the parent, guardian or custodian of these rights; and (ii) appointing counsel for an indigent parent, guardian or custodian within 14 days of a licensed child placement agency filing or appearing as a party in any such action. The department or agency shall provide a copy of the service or case plan to the parent, guardian or custodian of the adult with an intellectual disability or child and to the attorneys for all parties appearing in the proceeding within 45 days of the department or agency filing an appearance in such proceeding. Thereafter, any party may have the original or changed plan introduced as evidence, and with the consent of all parties the plan shall be filed with the court. Notwithstanding this section, the court may make such temporary orders as may be necessary to protect the adult with an intellectual disability or the child and society.

The department, upon its request, shall be represented by the district attorney for the district in which the case is being heard.

**Chapter 119: Section 29A. Legal fees of minors in criminal proceedings; liability of parents.**

Section 29A. The parents of an unemancipated minor shall be liable for such reasonable legal fees and expenses of an attorney representing the minor in criminal proceedings. Except where the parent is the alleged victim, the court shall determine whether the parent or guardian of an unemancipated minor is indigent. If the parent or guardian is not determined to be indigent, the court shall assess a \$300 fee against the parent or guardian to pay for the cost of any attorney that is supplied by the committee for public counsel services or assigned to represent the minor by the court and paid out of public funds in the criminal proceedings. If the parent is determined to be indigent but is still able to contribute toward the payment of some of the costs, the court shall order the parent to pay a reasonable amount toward the cost of appointed counsel. This section shall not apply to a parent who, as a result of a decree of a court of competent jurisdiction, does not have custody of the minor.

**Chapter 119: Section 29B. Determination of future status of committed children; orders; permanency hearings; appeals**

Section 29B: Except as provided herein, within 12 months of the original commitment, grant of custody, or transfer of responsibility of a child to the department by a court of competent jurisdiction, and not less than every 12 months thereafter while the child remains in the care of the department, the committing court shall conduct a permanency hearing, in accordance with rules established by the chief justice for administration and management, to determine and periodically review thereafter the permanency plan for the child. The plan shall address whether and, if applicable, when: (1) the child will be returned to the parent; (2) the child will be placed for adoption and the steps the department will take to free the child for adoption; (3) the child will be referred for legal guardianship; (4) the child will be placed in permanent care with relatives; or (5) the child will be placed in another permanent planned living arrangement. The department shall file a permanency plan prior to a permanency hearing that shall address the above placement alternatives. The court shall consult with the child in an age-appropriate manner about the permanency plan developed for the child.

If a child is not to be returned to his parents, the permanency plan shall consider in-state and out-of-state placement options. In the case of a child placed in foster care outside the state in which the home of the parents of the child is located, the permanency plan shall also address whether the out-of-state placement continues to be appropriate and in the best interests of the child. In the case of a child who has attained age 16, the permanency plan shall also address the services needed to assist the child in making the transition from foster care to independent living; and provided further, that the court shall consult with the child in an age-appropriate manner about the permanency plans developed for the child.

Upon making its determination, the court may make any appropriate order as may be in the child's best interests including, but not limited to, orders with respect to the child's care or custody. At the same time, the court shall consider the provisions of section 29C, and shall make the written certification and determinations required by said section 29C. The health and safety of the child shall be of paramount, but not exclusive, concern.

The permanency hearing shall be held within 30 days of a hearing at which a court determines that reasonable efforts to preserve and reunify families are not required pursuant to section 29C. The court may, however, make such determination at the time of the permanency hearing.

If continuation of reasonable efforts to return the child safely to his parent or guardian are found to be inconsistent with the permanency plan for the child or if reasonable efforts are not required pursuant to section 29C, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child. In subsequent permanency hearings held on behalf of the child, the court shall determine whether the department has made such efforts in accordance with section 29C.

A child, parent, guardian or the department may appeal to the appeals court from the determination or order of the trial court. The claim of appeal shall be filed in the office of the clerk or register of the trial court within 30 days following the court's determination or order. Thereafter, the appeal shall be governed by the Massachusetts Rules of Appellate Procedure. The scope of appellate review shall be limited to abuse of judicial discretion.

### **Chapter 119: Section 29C. Judicial certification of need to remove child from home**

Section 29C. If a court of competent jurisdiction commits, grants custody or transfers responsibility for a child to the department or its agent, the court shall certify that the continuation of the child in his home is contrary to his best interests and shall determine whether the department or its agent, as appropriate, has made reasonable efforts prior to the placement of a child with the department to prevent or eliminate the need for removal from the home; but, if a child has been placed voluntarily with the department by the parent under clause (1) of subsection (a) of section 23 and the parent consents to continued placement under a petition filed under said clause (1) or clause (2) of said subsection (a) of said section 23, the court shall determine at an initial hearing only whether continued placement is in the child's best interests. Except as provided herein, if a court has previously committed, granted custody or transferred responsibility for a child to the department or its agent, the court shall determine not less than annually whether the department or its agent has made reasonable efforts to make it possible for the child to return safely to his parent or guardian. In making any determination, the health and safety of the child shall be of paramount concern.

Reasonable efforts by the department prior to removal of a child from the home or to return the child to a parent or guardian shall not be required if the court finds that: (i) the child has been abandoned as defined in section 3 of chapter 210; (ii) the parent's consent to adoption of a sibling of the child was dispensed with under section 26 or under said section 3 of said chapter 210, or the parent's rights were involuntarily terminated in a case involving a sibling of the child; (iii) the parent has been convicted of 1 of the following crimes by a court of competent jurisdiction: (a) murder or voluntary manslaughter of another child of the parent or aiding, abetting, attempting, conspiring or soliciting to commit such a murder or voluntary manslaughter; or (b) an assault constituting a felony which resulted in serious bodily injury to the child or another child of the parent; or (iv) a parent has subjected the child to aggravated circumstances consisting of murder of another parent of the child in the presence of the child or by subjecting the child or other children in the home to sexual abuse or exploitation or severe or repetitive conduct of a physically or emotionally abusive nature. For the purposes of this section, conduct of an "emotionally abusive nature" shall mean any conduct causing an impairment to or disorder of the intellectual or psychological capacity

of a child as evidenced by observable and substantial reduction in the child's ability to function within a normal range of performance and behavior.

If a court has determined at a permanency hearing convened under section 29B, that reasonable efforts to safely return the child to his parent or guardian are inconsistent with the permanency plan for the child or if a court has determined that reasonable efforts are not required as set forth herein, the court shall determine at least annually thereafter whether the department has made reasonable efforts to place the child in a timely manner in accordance with the permanency plan determined and reviewed under section 29B.

The court shall make the certification and determinations required under this section in written form, which shall include the basis for the certification and determinations. A determination by the court that reasonable efforts were not made shall not preclude the court from making any appropriate order conducive to the child's best interest.

#### **Chapter 119: Section 29D. Notice of hearing**

Section 29D. The department shall provide notice of hearings held under sections 26, 29B and 39G to a foster parent, pre-adoptive parent or relative providing care for the child who is the subject of the petition and shall inform the foster parent, pre-adoptive parent or relative of his right to attend the hearing and to be heard. Nothing in this provision shall be construed to provide that such foster parent, pre-adoptive parent or relative shall be made a party to the proceeding.

#### **Chapter 119: Section 30, 31. Repealed, 1961, 396, Sec. 5.**

#### **Chapter 119: Section 32. Placement of children in private families; early and periodic screening, diagnostic and treatment standards; individualized health care plan**

Section 32. Children in the care or custody of the department shall be placed in private families; provided, that any child who upon examination is found to be in need of special care, treatment or education may, if it is found by the department to be in the best interest of the child, be placed in a public or private institution or school, the primary purpose of which is the special care, treatment or education of children. The reasons for the placement of any such child shall be entered in the records of the department.

The department shall insure that every foster child upon entry into the foster care system shall be screened and evaluated under the early and periodic screening, diagnostic and treatment standards established by Title XIX of the Social Security Act, unless the child has been screened and evaluated within 30 days prior to his entry into the system.

A medically needy child who is in foster care, whether specialized or other type of care as provided by the department or its agents, may not be placed in another foster home or other placement without an individualized health care plan that is unique to the child's health care needs; provided, however, that in an emergency due to abuse or neglect, the child may be removed without a plan. The plan shall include, but not be limited to: a description of the specific health care needs of the child and specific treatment and services necessary to meet those needs; identification of health care agencies or personnel or other professionals who may conduct transitional training on the child's health care needs for the subsequent foster parents or other placement or the family to whom the child will return. The department shall also provide to the subsequent foster parents or other placement or to the family to whom the child will return information on health care resources available and health care and other personnel whose services are required by the child.

#### **Chapter 119: Section 33. Placement of children in family home care.**

Section 33. In placing a child in family home care, the department, or any private charitable or child-care agency, shall consider all factors relevant to the child's physical, mental and moral health.

**Chapter 119: Section 33A. [ There is no Chapter 119: Section 33A.]**

**Chapter 119: Section 33B. Placement in family home care of juvenile who has or may have committed a sexual offense or arson.**

Section 33B. At the time of placing a child in family home care, but in any event no later than five working days following such placement, the department or any other child-care agency shall determine whether the child has been adjudicated delinquent for a sexual offense or the commission of arson, or has admitted to such behavior, or is the subject of a documented or substantiated report of such behavior. If the department or other agency determines that the child has been so adjudicated, admitted, or found to have engaged in such behavior, it shall immediately refer the child to a qualified diagnostician for evaluation and assessment, including a risk management assessment of the child and a recommendation as to the type of appropriate and safe placement for the child. Such evaluation and assessment shall be completed within not more than ten working days from referral by the department or agency. No delay beyond the time periods in this section by the department shall in itself give rise to any claim of negligence or any other claim for damages. For the purposes of this section, a qualified diagnostician shall mean an individual who possesses specialized training and experience in the evaluation and treatment of sexually abusive youth or arsonists, as appropriate. Pending completion of such evaluation, the department or agency may place the child in an interim setting that is able to provide appropriate safety and security in light of the known risks posed by the child. Such risks shall be disclosed to the caretaker, including an interim safety plan to be implemented by the caretaker.

If the diagnostician recommends that the placement, including situations in which the child remains at home, should have adequate sex offender or arson specific risk management procedures, the department or agency responsible for placing the child shall prepare and implement a plan to address the safety of the child and other children in the home or residence, and to address the safety of the children in the immediate neighborhood. Such plan must include notification to all adults responsible for supervising the child in the home or residence of the child's behavioral history, including adjudications, if any, and education of all persons living in the home or residence about the known risks attendant to the child's behavior and methods of preventing such behavior, and provision for appropriate treatment for the child who is being placed. Where the department or agency makes a referral of such child to a foster home, residential facility, other agencies or organizations, or individuals for the purpose of receiving custodial services, the department or agency shall disclose the child's behavioral history, including adjudications, if any, to the designated recipient of the referral, prior to placement or at referral.

**Chapter 119: Section 34. Transportation of children in patrol wagons.**

Section 34. A child involved in any proceeding shall not be transported in a patrol wagon from his home or from any other place to any court or institution, but if a conveyance is necessary shall convey him in such other suitable vehicle as shall be provided or designated by the department. Violation of this section shall be punished by a fine of not less than twenty-five nor more than fifty dollars or by imprisonment for not more than three months.

**Chapter 119: Section 35. Furnishing parent or guardian information as to child; permission to visit; notice; parents convicted of first degree murder**

Section 35. If the parent or guardian of a child placed in charge of any person, association or public or private institution by any state department, town board, or by any public or private corporation or body of persons authorized by law to so place children, or if one of the next of kin of an orphan so placed in charge and without guardian, is not, upon request, informed by such department, board, corporation or body of



persons where the child is, the probate court for the county where such child has his legal residence may, upon petition of such parent, guardian or next of kin, and upon notice, if in its opinion the welfare of the child and the public interest will not be injured thereby, require such department, board, corporation or body of persons to give the information and permit the parent, guardian or next of kin to visit the child at such times and under such conditions as the court orders; and the court may revise its order or make new orders or decrees as the welfare of the child and the public interest may require. No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

**Chapter 119: Section 36. Bringing child into commonwealth with view to adoption, custody or care; permit; application; bond.**

Section 36. No person or institution shall bring or cause to be brought into the commonwealth, or receive therein, from any other state, province or country, any child for the purpose of placing or boarding, or of procuring the placing or boarding of such child, in a family or home within the commonwealth, with a view to adoption, guardianship, custody or care by any person other than one related to him by blood or marriage, without first obtaining a permit therefor from the department. Such a permit shall not issue until a written application therefor has been filed with the department on forms by it prepared, containing such information relative to such child as the department may require, accompanied by an individual or blanket bond running to the commonwealth in such penal sum and with such surety or sureties as the department may approve, conditioned on the following:-- (1) that all statements contained in such an application are true in substantial particulars; (2) that any such child becoming a public charge during his minority shall be removed from the state not later than thirty days after notice from the department; (3) that such child shall be removed from the state immediately upon his release from any penal or reformatory institution or training school to which he has been committed, within three years of his arrival within the state, for juvenile delinquency or crime; (4) that such child shall be placed or boarded under such agreement as will secure to him a proper home and surroundings, and as will render his custodian responsible for his proper care, education and training, under adequate supervision and subject to annual visitation by an agent; and (5) that such reports relative to the child shall be made to the department as it may require. In case of a breach of any condition of such a bond, the attorney general, upon request of the department, shall put the bond in suit, and the commonwealth or any city or town thereof shall be reimbursed from the proceeds for any expense incurred by reason of a breach of any such condition. Violation of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

**Chapter 119: Section 37. Rules and regulations of department.**

Section 37. The department shall make rules and regulations concerning the administration of its duties.

**Chapter 119: Section 38. Closed hearings; publication of names**

Section 38. All hearings under sections 1 to 38A, inclusive, except those related to court orders to not resuscitate or to withdraw life-sustaining medical treatment for children in the custody of the department under a care and protection order, shall be closed to the general public. It shall be unlawful to publish the names of persons before the court in any closed hearing.

### **Chapter 119: Section 38A. Petitions for order to not resuscitate or to withdraw life-sustaining medical treatment; required recommendations; appeals**

Section 38A. In any proceedings related to court orders to not resuscitate or to withdraw life-sustaining medical treatment, the department or the party petitioning for the order shall require: (i) a written opinion from the child's treating physician, (ii) a written recommendation from the ethics committee of the hospital at which the child is a patient, and (iii) a written second opinion from a physician who is certified in the same medical specialty as the child's treating physician and who is not affiliated with the hospital at which the child is a patient. The department or the party petitioning for the order shall submit these documents to the court. The commissioner shall determine and make the department's recommendation to the court. The court shall also seek a recommendation from the child's parent or guardian. The court shall appoint a guardian ad litem to make a recommendation to the court on behalf of the child. Any appeal made under this section shall be an interlocutory appeal.

### **Chapter 119: Section 39. Abandonment of infant under age of ten.**

Section 39. Whoever abandons an infant under the age of ten within or without any building, or, being its parent, or being under a legal duty to care for it, and having made a contract for its board or maintenance, absconds or fails to perform such contract, and for four weeks after such absconding or breach of his contract, if of sufficient physical and mental ability, neglects to visit or remove such infant or notify the department of his inability to support such infant, shall be punished by imprisonment in a jail or house of correction for not more than two years; or, if the infant dies by reason of such abandonment, by imprisonment in a jail or house of correction for not more than two and one half years or in the state prison for not more than five years.

### **Chapter 119: Section 39½. Placement of a newborn into foster care**

Subject to appropriation, the department shall accept for placement into foster care any newborn infant 7 days of age or less that is voluntarily placed with a hospital, police department or manned fire station, hereinafter "designated facility" by a parent of said newborn infant. Such a voluntary placement under this section shall not constitute, in and of itself, an automatic termination of parental rights or an abrogation of the parental rights or responsibilities but shall, for purposes of authorizing the department to initiate a petition to terminate parental rights under chapter 210, be presumed to be an abandonment of the newborn infant that has been so placed.

Voluntary abandonment of a newborn infant 7 days of age or younger to an appropriate person at a hospital, police department or manned fire station shall not by itself constitute either a finding of abuse or neglect or a violation of any criminal statute for child abuse or neglect or for abandonment. If child abuse or neglect, that is not based solely on the newborn infant having been left in the hospital, police department or manned fire station is suspected, hospital, police or fire department personnel who are mandated reporters under section 51A shall report the abuse or neglect.

The designated facility receiving a newborn infant shall immediately notify the department of the placement of the newborn infant at the facility. Upon receipt of such notice, the department shall take immediate custody of the newborn infant and shall initiate all actions authorized by law to achieve the safety and permanent placement of the newborn infant in a manner that is consistent with the best interests of the child.

The person accepting a newborn infant at a designated facility shall make every effort to solicit the following information from the parent placing the newborn infant: (1) the name of the newborn infant; (2) the name and address of the parent placing the newborn infant; (3) the location of the newborn infant's birthplace; (4) information relative to the newborn infant's medical history and his or her biological family's

medical history, if available; and (5) and any other information that might reasonably assist the department or the court in current or future determinations of the best interests of the child, including whether the parent or guardian plans on returning to seek future custody of the child. The person receiving the newborn infant shall encourage the parent to provide the information but the parent shall not be required to provide such information.

The department shall develop and implement a public information program to inform the general public of the provisions of this section, teen pregnancy prevention programs and adoption information. The department shall also work in conjunction with other departments and agencies of the commonwealth and the Massachusetts Hospital Association relative to development of the program. The program may include, but not be limited to, educational and informational materials in print, audio video, electronic and other media, public service announcements and advertisements and the establishment of a toll-free hotline.

For purposes of this section only, the following term shall be defined in the following manner unless the context shall clearly indicate a different meaning or intent:-- "hospital", a hospital that is licensed under section 51 of chapter 111, or operated by the teaching hospital of the University of Massachusetts Medical School.

The department shall explore the possibility of expending funds received from the United States Department of Health and Human Services pursuant to the Promoting Safe and Stable Families Program, as most recently amended by the Promoting Safe and Stable Families of 2001, in order to implement the public information program required by this section and to alleviate the burden said information program may have on the department's appropriation from the commonwealth. When implementing its public information program, the department shall prioritize those areas of the commonwealth that have been identified by the department of public health as having the highest teen pregnancy rates.

The department, in conjunction with a designee of the juvenile court, the probate and family court, the center for adoption research at the University of Massachusetts, Massachusetts Families for Kids, Massachusetts Children's Trust Fund, Massachusetts Society for the Prevention of Cruelty to Children, Alliance on Teen Pregnancy and the department of early care and education, shall report every 2 years on the overall effectiveness of the program of voluntary placement of newborn infants established pursuant to this section. The report shall include, but not be limited to, the following: (1) an analysis of this section's effectiveness in decreasing the number of newborns that are abandoned in an unsafe manner in the commonwealth; (2) the department's success or failure in permanently placing in the adoption process any newborn placed with a designated facility pursuant to this section; (3) the average length of time that newborns remain in foster care after being so placed; (4) any issues arising from the termination of parental rights following the placement of a newborn pursuant to this section; (5) the success or failure of any public information campaign implemented by the department pursuant to this section; (6) any increased administrative burdens that may be placed upon any department or agency of the commonwealth as a result of this section; (7) issues with regard to the eligibility of any newborn infant placed pursuant to this section for federal entitlements such as foster care or adoption subsidies under Title IV-E of the United States Social Security Act or any other applicable federal law; and (8) the frequency or infrequency with which a parent placing a newborn at a designated facility supplies the facility with the information sought by the facility pursuant to the fourth paragraph of this section and any negative effects the lack of medical or background information on the child or parents may have had on facilitating the temporary or permanent placement of the child through the foster care or adoption process. The report, including any legislative recommendations, shall be submitted to the joint committee on children, families and persons with disabilities and the house and senate committees on ways and means on or before December 1, 2008 and not later than December 1 of each even numbered year thereafter.

**Chapter 119: Section 39A--39C. Repealed, 1973, 1076, Sec. 6.**

**Chapter 119: Section 39D. Visitation rights to certain grandparents of unmarried minor children; place to file petition**

Section 39D. If the parents of an unmarried minor child are divorced, married but living apart, under a temporary order or judgment of separate support, or if either or both parents are deceased, or if said unmarried minor child was born out of wedlock whose paternity has been adjudicated by a court of competent jurisdiction or whose father has signed an acknowledgement of paternity, and the parents do not reside together, the grandparents of such minor child may be granted reasonable visitation rights to the minor child during his minority by the probate and family court department of the trial court upon a written finding that such visitation rights would be in the best interest of the said minor child; provided, however, that such adjudication of paternity or acknowledgment of paternity shall not be required in order to proceed under this section where maternal grandparents are seeking such visitation rights. No such visitation rights shall be granted if said minor child has been adopted by a person other than a stepparent of such child and any visitation rights granted pursuant to this section prior to such adoption of the said minor child shall be terminated upon such adoption without any further action of the court.

A petition for grandparents visitation authorized under this section shall, where applicable, be filed in the county within the commonwealth in which the divorce or separate support complaint or the complaint to establish paternity was filed. If the divorce, separate support or paternity judgment was entered without the commonwealth but the child presently resides within the commonwealth, said petition may be filed in the county where the child resides.

**Chapter 119: Section 39E. Petitions seeking determination that child is in need of services; jurisdiction; standing**

Section 39E. The divisions of the juvenile court department may receive and hear petitions seeking a determination that a child is in need of services as defined in section twenty-one, in accordance with the provisions of this section and of sections thirty-nine F to thirty-nine I, inclusive. Proceedings pursuant to sections thirty-nine E to thirty-nine I, inclusive, shall not be deemed criminal proceedings. The jurisdiction of the Boston juvenile court for the subject matter of this section shall extend to the territorial limits of Suffolk county.

A parent or legal guardian of a child having custody of such child, or a police officer may apply for a petition in one of said courts alleging that said child persistently runs away from the home of said parent or guardian or persistently refuses to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child.

Any supervisor of attendance, duly appointed pursuant to section nineteen of chapter seventy-six may apply for a petition in said court alleging that said child persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school.

If the child is not brought into court on arrest, the clerk shall set a date for a hearing to determine whether a petition should issue, shall notify the child of such hearing and shall request the chief probation officer or his designee to conduct a preliminary inquiry to determine whether in his opinion the best interests of the child require that a petition be issued. The court shall hold a hearing in which it shall receive the recommendation of the probation officer and shall either (i) decline to issue the petition because there is no probable cause to believe that the child is in need of services; (ii) decline to issue the petition because it finds that the interests of the child would best be served by informal assistance without a trial on the merits, in which case the court shall, with the consent of the child and his parents or guardian, refer the child to a probation officer for assistance; or (iii) issue the petition and schedule a trial on the merits. If the child is brought in on arrest, the petition shall issue if it has not already issued, and the court shall immediately request the probation officer promptly to make like inquiry and thereafter report to the court his

recommendation as to whether the interests of the child can best be served by informal assistance without a trial on the merits. Upon receiving such recommendation, the court may hold a hearing and shall decide whether to proceed with a trial on the merits or to refer the child to the care of a probation officer for assistance.

Whenever a child is referred to a probation officer for assistance, such officer shall have the authority to refer the child to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services and shall have the authority to conduct conferences with the child and the child's family for the purpose of effecting adjustments or agreements which are calculated to resolve the situation which formed the basis of the application or petition and which will eliminate the need for a judicial trial on the merits. During the pendency of such referrals or conferences, neither the child nor his parents may be compelled to appear at any conferences, produce any papers, or visit any place. However, if the child or his parents fail to participate in good faith in the referrals or conferences arranged by the probation officer, the probation officer shall so certify in writing, and the clerk shall issue a petition, if one has not already been issued, and shall set a date for a trial on the merits. The judge who conducted the hearing on the issuance of a petition shall not preside at any subsequent hearing on the merits. If the child is being detained in any facility pending the determination as to whether a petition shall issue, or pending a trial on the merits, and a determination is made either not to issue the petition or to refer the child to the probation officer, the person in charge of the facility wherein the child is detained shall be notified immediately and the child shall be immediately released. Conferences and referrals arranged under this section may extend for a period not to exceed six months from the date that the application was initially made for the petition, unless the parent and child voluntarily agree in writing to a continuation of such conferences or referrals for an additional period not to exceed six months from the expiration of the original period. Upon the expiration of the initial six-month period, or of such additional six-month period, the petition, if any, shall be dismissed and the child and his parents discharged from any further obligation to participate in such conferences and referrals, or a petition shall, if not already issued, be issued and a date set for a trial on the merits. No statements made by a child or by any other person during the period of inquiries, conferences, or referrals may be used against the child at any subsequent hearing for the purpose of adjudicating him a child in need of services, but such statements may be received by the court after adjudication for the purpose of disposition.

Upon the filing of a petition under this section, the court may issue a summons, to which a copy of the petition shall be attached, requiring the child named in such petition to appear before said court at the time named therein. If such child fails to obey the summons, said court may issue a warrant reciting the substance of the petition and requiring the officer to whom it is directed forthwith to take and bring such child before said court. Notice of the hearing shall be given to the department of youth services and to the department of children and families.

Where the court summons such child, the court shall in addition issue a summons to both parents of the child, if both parents are known to reside in the commonwealth, or to one parent if only one is known to reside within the commonwealth, or, if there is no parent residing in the commonwealth, then to the parent having custody or to the lawful guardian of such child. Said summons shall require the person served to appear at a time and place stated therein at a hearing to determine whether or not such child is in need of services.

Unless service of the summons required by this section is waived in writing, such summons shall be served by the constable or police officer, either by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

The hearing of a petition filed under section thirty-nine E in a division of the district court department or of the juvenile court department shall be by a jury of six, unless the child files a written waiver and consent to the petition being heard without a jury, subject to his right of appeal therefrom for trial by a jury of six pursuant to section thirty-nine I. Such waiver shall not be received unless the child is represented by counsel or has filed, through his parent or guardian, a written waiver of counsel. Such trials by jury in the first instance shall be in jury sessions designated for their respective departments by the administrative justices of the district and juvenile courts for the hearing of appeals claimed pursuant to section thirty-nine I. All provisions of law and rules of court relative to the hearing and trial of such appeals shall apply also to jury trials in the first instance.

#### **Chapter 119: Section 39F. Right to counsel; determination of indigency; assessment of costs**

Section 39F. When a child alleged to be in need of services is brought before a juvenile court or a juvenile session of a district court pursuant to section thirty-nine E, said child shall be informed that he has a right to counsel at all hearings, and if said child is not able to retain counsel, the court shall appoint counsel for said child. The court shall determine whether the parent or guardian of a child alleged to be in need of services is indigent. If the court determines that the parent or guardian is not indigent, the court shall assess a \$300 fee against the parent or guardian to pay for the cost of appointed counsel. If the parent is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent to pay a reasonable amount toward the cost of appointed counsel.

#### **Chapter 119: Section 39G. Hearing; determination of child in need of services**

Section 39G. At any hearing to determine whether a child is in need of services, said child and his attorney shall be present. If the court finds the allegations in the petition have been proved at the hearing beyond a reasonable doubt, it may adjudge the child named in such petition to be in need of services. Upon making such adjudication the court, taking into consideration the physical and emotional welfare of the child, may make any of the following orders of disposition:

(a) subject to any conditions and limitations the court may prescribe, including provision for medical, psychological, psychiatric, educational, occupational and social services, and for supervision by a court clinic or by any public or private organization providing counseling or guidance services, permit the child to remain with his parents;

(b) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for those services described in clause (a), place the child in the care of any of the following:

(1) a relative, probation officer, or other adult individual who, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; (2) a private charitable or childcare agency or other private organization, licensed or otherwise authorized by law to receive and provide care for such children; or (3) a private organization which, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; or

(c) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, commit the child to the department of children and families. At the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. The department shall give due consideration to the recommendations of the court. The department may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C. The department shall direct the type and length of such out-of-home placement. The department shall give due consideration to the requests of the child that the child be placed outside the

home of a parent or guardian where there is a history of abuse and neglect in the home by the parent or guardian.

A child found to be in need of services shall not be committed to any county training school. A child found to be in need of services shall not be committed to an institution designated or operated for juveniles adjudicated delinquent. However, such child may be committed to a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility and may, in addition, be referred to the department of youth services for placement in individual foster care.

Any order of disposition pursuant to this section shall continue in force for not more than six months; provided, however, that the court which entered the order may, after a hearing, extend its duration for additional periods, each such period not to exceed six months if the court finds that the purposes of the order have not been accomplished and that such extension would be reasonably likely to further those purposes.

No order shall continue in effect after the eighteenth birthday of a child named in a petition authorized to be filed by a parent or a legal guardian having custody, or a police officer, under the provisions of the second paragraph of section thirty-nine E, or after the sixteenth birthday of a child named in a petition authorized to be filed by a supervisor of attendance under the provisions of the third paragraph of said section thirty-nine E.

### **Chapter 119: Section 39H. Arrest of child; notification and placement; bail; detention; right of appeal**

Section 39H. A child may be arrested for committing the behavior described in the definition of child in need of services in section twenty-one, only if such child has failed to obey a summons issued pursuant to section thirty-nine E, or if the arresting law enforcement officer has probable cause to believe that such child has run away from the home of his parents or guardian and will not respond to a summons.

Whenever such child is arrested and the court with jurisdiction over the case is not in session, the law enforcement officer in charge of the police station or town lockup to which the child has been taken, or his designee, shall immediately notify (1) the probation officer of the division of the juvenile court department within whose district such child was arrested or resides, or such other probation officer who may have knowledge of the child and (2) a representative of the department of children and families, if the law enforcement officer has reason to believe that the child is or has been in the care or custody of such department, and shall inquire into the case.

The law enforcement officer, in consultation with the probation officer, shall then immediately make all reasonable diversion efforts so that such child is delivered to the following types of placements, and in the following order of preference:

(i) to one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of children and families or the child's foster home;

(ii) to a temporary shelter facility licensed or approved by the department of early education and care, a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care, or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; provided, however, that such a placement is available and, in the view of the probation officer, appropriate for the child; provided, further, that such a placement furnish said law enforcement officer with a written statement that it will make reasonable efforts to secure the child's appearance at the next available court session and that such placement will furnish the necessary transportation to such placement and to the court, unless the law enforcement officer chooses to furnish

said transportation, provided, further, that such child may not be securely detained in a police station or town lockup.

Notwithstanding the foregoing requirements for placement, any such child who is arrested shall, if necessary, be taken to a medical facility for treatment or observation.

If the court finds that a child alleged to be a child in need of services by reason of persistently refusing to obey the lawful and reasonable commands of his parents or legal guardian is likely not to appear at the preliminary inquiry or at the hearing on the merits, the court shall order the child to be admitted to such bail or to be released upon such terms and conditions as it determines to be reasonable. A child who does not post bail and is not otherwise released may be detained under such terms and conditions as the court may impose in a facility operated by or under contract with the department for the care of juveniles, provided that no such child is so detained for more than fifteen days without being brought again before the court for a hearing on whether such detention should be continued for another fifteen day period. If the court decides to so continue said detention, it shall note in writing the detailed reasons for its decision. Any child aggrieved by such decision shall have an immediate right to appeal to the superior court under the procedures set forth in section fifty-eight of chapter two hundred and seventy-six; provided further, however, that in no event shall any child be detained under this section for more than forty-five days. If a child fails without good cause to respond to a summons, the court may similarly admit the child to bail, or release the child upon conditions set by the court, or, if the child fails to post bail, and is not otherwise released, detain the child subject to the above limitations. Whenever bail is imposed under this section, the provisions of section fifty-eight of chapter two hundred and seventy-six shall be applicable.

**Chapter 119: Section 39I. Appeal; trial de novo, with or without jury; rights and procedures.**

Section 39I. Any child who is adjudicated a child in need of services may appeal for a trial de novo in a jury-of-six session of the juvenile court department for the county where the hearing is held, as designated by the chief justice of the juvenile court department. Such appeal shall be made by filing a written notice of same by the end of the next business day after the entry of judgment or adjudication, or within such further time as the court may allow.

The child may waive his claim to jury trial and have the appeal heard by a judge without jury. When an appeal is claimed, the clerk of the court in which said claim is filed shall forward forthwith all papers in the case to the clerk of the court designated to hear such appeals. The verdict of the jury shall be unanimous and the court shall enter and record its findings upon the verdict of the jury.

All the rights and procedures provided in sections thirty-nine E to thirty-nine H, inclusive, shall apply at the trial of the appeal. The justice presiding at said trial shall have all the powers and duties of a justice sitting in a juvenile court under this chapter. No justice shall preside over a trial on appeal in a case in which he presided at the initial trial. The trial on appeal in a district court jury session shall be heard in a session set apart from the other business of the district court and devoted exclusively to juvenile cases. This shall be known as the juvenile appeals session and shall have a separate trial list and docket.

An appeal shall not stay the order, judgment or decree appealed from, but the district court or juvenile court may otherwise order, on application and hearing consistent with this chapter, if suitable provision is made for the care and custody of the child.

Review may be had in the appeals court in the same manner as is provided for trials of civil cases held in the superior court department.



**Chapter 119: Section 39J. Payment of expenses for services under secs. 39E—39I by counties.**

Section 39J. Expenses for services provided children alleged or adjudicated to be children in need of services shall be paid by the county in which the court sits upon written certification thereof by the court. The clerk of court shall collect and transmit to the county treasurer, or, in Suffolk county, to the auditor of Boston, hereinafter included in the term "county treasurer", together with an attested copy of the court's order, all bills and vouchers for the costs of any services authorized by the court under the provisions of sections thirty-nine E to thirty-nine I, inclusive. The county treasurer shall keep a record of all payments made for said services, including therein the name of the child, the name or names and addresses of any public or private organization or persons to whom payment is made, the services for which payment is made, and the date upon which payment was made. Periodically, according to a schedule established by the treasurer and receiver-general of the commonwealth, the several county treasurers shall requisition funds from the commonwealth to cover such payments made by the counties during the preceding period. The state treasurer shall pay said requisitions from such sums as may have been appropriated or are otherwise available therefor, and he may require any documentation that he deems appropriate before making payment. Any state agency, department or secretariat which provides, operates, maintains, supervises or funds a program under which any of the services authorized in sections thirty-nine E to thirty-nine I, inclusive, are available may, to the extent consistent with the purposes of such program, provide such services or release funds to the state treasurer for reimbursement by him to the counties for services provided by others which are within the scope of the services authorized in said sections thirty-nine E to thirty-nine I, inclusive.

The state treasurer shall on or before December first of each year render a written report to the general court containing statistics showing the purpose and amounts of expenditures for said services by the various counties for which the commonwealth has made reimbursement, and making such recommendations for change in the law as he shall see fit.

**Chapter 119: Section 40--51. Repealed, 1954, 646, Sec. 1.**

**Chapter 119: Section 51A. Reporting of suspected abuse or neglect; mandated reporters; collection of physical evidence; penalties; content of reports; liability; privileged communication**

Section 51A. (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; or (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.

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 21/2 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 21/2 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.

### **Chapter 119: Section 51B. Investigation of report of abuse filed under Sec. 51A; removal of child; transmission and filing of written reports; notice to district attorney; disclosure of information by mandated reporter**

Section 51B. (a) Upon receipt of a report filed under section 51A, the department shall investigate the suspected child abuse or neglect, provide a written evaluation of the household of the child, including the parents and home environment and make a written determination relative to the safety of and risk posed to the child and whether the suspected child abuse or neglect is substantiated.

(b) The investigation shall include: (i) a home visit at which the child is viewed, if appropriate; (ii) a determination of the nature, extent and cause or causes of the injuries; (iii) the identity of the person or persons responsible therefore; (iv) the name, age and condition of other children in the same household; (v) an evaluation of the parents and the home environment; and (vi) all other pertinent facts or matters. The department shall coordinate with other agencies to make all reasonable efforts to minimize the number of interviews of any potential victim of child abuse or neglect. Upon completion of the investigation and evaluation, the department shall make a written determination relative to: (i) the safety of the child and risk of physical or emotional injury to that child and the safety of and risk thereto of any other children in the household; and (ii) whether the suspected child abuse or neglect is substantiated.

(c) If the department has reasonable cause to believe a child's health or safety is in immediate danger from abuse or neglect, the department shall take a child into immediate temporary custody if it has reasonable cause to believe that the removal is necessary to protect the child from abuse or neglect. The investigation and evaluation shall commence within 2 hours of initial contact and an interim report with an initial determination regarding the child's safety and custody shall be completed as soon as possible but not more than 24 hours after initial contact. The final report required under this section shall be complete within 5 business days of initial contact. If a child is taken into immediate temporary custody, the department shall

make a written report stating the reasons for such removal and shall file a care and protection petition under section 24 on the next court day.

(d) If the department does not have reasonable cause to believe that a child's health or safety is in immediate danger from abuse or neglect, the investigation and evaluation shall commence within 2 business days of initial contact and a determination shall be made within 15 business days, unless a waiver has been approved by the area director or requested by law enforcement.

(e) Notwithstanding subsection (c), whenever the department has reasonable cause to believe that removal is necessary to protect a child from abuse or neglect, it shall take the child into immediate temporary custody. If a child is taken into immediate temporary custody, the department shall make a written report stating the reasons for such removal and shall file a care and protection petition under section 24 on the next court day.

(f) If a child named in a report filed under section 51A is in an out-of-home placement and the suspected child abuse or neglect is substantiated, the department shall notify his parents that such report was filed and has been substantiated by the department. If the child died or suffered serious bodily injury, the department shall notify the parents, including the biological parents, if the department determines that such notification is in the best interest of the child or of another child in the same placement. The department shall consult with these parents in decisions about removal or further placement. These notifications and consultations shall not be required if the commissioner determines that such notifications or consultations are not appropriate or in the best interests of a child.

(g) The department shall offer appropriate services to the family of any child which it has reasonable cause to believe is suffering from any of the conditions described in the report to prevent further injury to the child, to safeguard his welfare, and to preserve and stabilize family life whenever possible. If the family declines or is unable to accept or to participate in the offered services, the department or any person may file a care and protection petition under section 24.

(h) The department shall file in the central registry, established under section 51F, a written report containing information sufficient to identify each child whose name is reported under this section or section 51A. A notation shall be sent to the central registry whenever further reports on each such child are filed with the department. If the department determines during the initial screening period of an investigation that a report filed under section 51A is frivolous, or other absolute determination that abuse or neglect has not taken place, such report shall be declared as "allegation invalid". If a report is declared "allegation invalid", the name of the child, or identifying characteristics relating to the child, or the names of his parents or guardian or any other person relevant to the report, shall not be placed in the central registry or in any other computerized program utilized in the department.

(i) The department may purchase and utilize such protective services of private and voluntary agencies as it determines necessary.

(j) The department shall adopt regulations to implement the sections 51A to 51F, inclusive.

(k) The department shall notify and shall transmit copies of substantiated 51A reports and its written evaluations and written determinations under subsection (a) or (b) to the district attorney for the county in which the child resides and for the county in which the suspected abuse or neglect occurred, and to the local law enforcement authorities in the city or town in which the child resides and in the city or town in which the suspected abuse or neglect occurred when the department has reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect.

The department shall immediately report to the district attorney and local law enforcement authorities listed above when early evidence indicates there is reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect:

(1) a child has died or has suffered brain damage, loss or substantial impairment of a bodily function or organ, substantial disfigurement, or serious physical injury including, but not limited to, a fracture of any bone, a severe burn, an impairment of any organ or an injury requiring the child to be placed on life-support systems;

(2) a child has been sexually assaulted, which shall include a violation of section 13B, 13B1/2, 13B3/4, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265.

(3) a child has been sexually exploited, which shall include a violation of section 4A, 4B or 29A of said chapter 272; or

(4) any other disclosure of physical abuse involving physical evidence which may be destroyed, any current disclosure by a child of sexual assault, or the presence of physical evidence of sexual assault.

Within 45 days of the notification under the first paragraph, the department shall further notify the district attorney of a service plan, if any, developed for such child and his family.

No provision of chapter 66A, sections 135 to 135B, inclusive, of chapter 112, or sections 51E and 51F of this chapter relating to confidential data or confidential communications shall prohibit the department from making such notifications or from providing to the district attorney or local law enforcement authorities any information obtained under this section. No person providing notification or information to a district attorney or local law enforcement authorities under this section shall be liable in any civil or criminal action by reason of such action. Nothing herein shall be construed to prevent the department from notifying a district attorney relative to any incident reported to the department under section 51A or to limit the prosecutorial power of a district attorney.

(l) If the department substantiates a report alleging that abuse or neglect occurred at a facility approved, owned, operated or funded, in whole or in part, by the department of elementary and secondary education, the department of early education and care, the department of mental health, the department of developmental services, the department of public health or the department of youth services, the department shall notify the office of the child advocate and the affected department, in writing, by transmitting a copy of the report filed under section 51A and the department's written evaluation and written determination.

If the department is aware of a licensing violation in any such facility, the department shall immediately notify the affected department.

No provision of chapter 66A, sections 135 to 135B, inclusive, of chapter 112, or sections 51E and 51F, or any other provision of law shall prohibit: (i) the department from transmitting copies of reports filed under section 51A or its written evaluations and written determinations to the office of the child advocate or the

affected departments; (ii) the department, the office of the child advocate and the affected departments from coordinating activities and sharing information for the purposes of this section or for investigating a licensing violation; or (iii) the department's employees from testifying at administrative hearings held by the affected department in connection with a licensing violation.

(m) Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information but subject to subsection (j) of section 51A, a mandated reporter shall answer questions and provide information posed by the department relating to an investigation conducted under this section, whether or not that person filed the 51A report being investigated. A statutory or common law privilege shall not preclude the admission of any such information in any civil proceeding concerning abuse or neglect of a child, placement or custody of a child.

(n) No person required to provide such information under this section or permitted to disclose information under section 5A of chapter 119A shall be liable in any civil or criminal action for providing such information.

(o) No employer shall discharge, discriminate or retaliate against a mandated reporter who, in good faith, provides such information, testifies or is about to testify in any proceeding involving child abuse or neglect unless such person perpetrated or inflicted such abuse or neglect. Any employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.

(p) If the department determines that a 51A report is not substantiated, the department shall notify in writing any and all sources or recipients of information in connection with the investigation that the report of abuse or neglect has not been substantiated, unless the target of the investigation requests that such notification not occur.

(q) The department and the private agencies under contract with it, shall conduct periodic and regular training and education to caseworkers, screeners of 51A reports, and administrators of the department and the agencies regarding their duties and obligations under section 51A and 51B.

(r) There shall be a review by a regional clinical review team when 3 or more 51A reports involving separate incidents have been filed on any child in a family within 3 months and a review by an area clinical review team when 3 or more 51A reports involving separate incidents have been filed on any child in a family within 1 year.

### **Chapter 119: Section 51C. Custody of injured child pending transfer to department or hearing.**

Section 51C. If a parent or other person requests the release from a hospital of a child reported pursuant to section fifty-one A, the presiding judge of the juvenile court of the judicial district in which such hospital is located may, if he believes such release would be detrimental to the child's health or safety, authorize the hospital and the attending physician, by any means of communication, to keep such a child in the hospital until custody is transferred to the department or until a hearing may be held relative to the care and custody of such child.

Any other physician treating a child reported pursuant to section fifty-one A may be so authorized by the court to keep such child in his custody until such time as the custody of the child has been transferred to the department or until a hearing may be held relative to the care and custody of such child.

## **Chapter 119: Section 51D. Powers and duties of area directors; multi-disciplinary service teams**

Section 51D. Each area director of the department shall be responsible for implementing subsection (k) of section 51B.

Each area director shall, in cooperation with the appropriate district attorney, establish 1 or more multi-disciplinary service teams to review the provision of services to the children and families who are the subject of 51A reports that meet the conditions of subsection (k).

Each team shall consist of the department's caseworker for the particular case, 1 representative of the appropriate district attorney, and at least 1 other member appointed by the area director who is not an employee of either office. The additional member shall have training and experience in the fields of child welfare or criminal justice and, as far as practicable, be involved with the provision of services to these families. No members of a team shall receive any compensation, or in the case of a state employee, any additional compensation, for service on the team.

The team shall review and monitor the service plan developed by the department under subsection (g) of section 51B. The team shall evaluate the effectiveness of the service plan in protecting the child from further abuse or neglect. The team shall make recommendations regarding amendments to the service plan, the advisability of prosecuting members of the family, and the possibility of utilizing diversionary alternatives. If the team finds that services required under such plan are not provided to the family, the case shall be referred to the commissioner.

The team shall have full access to the service plan and any personal data known to the department which is directly related to the implementation of the plan, notwithstanding sections 51E and 51F, chapter 66A, and section 135 of chapter 112. The members of the team shall be considered to be employees of the department for purposes of protecting the confidentiality of the data and the data shall be utilized solely to carry out the provisions of this section; provided, however, that the team may report to the district attorney if the family has failed to participate in the plan.

Each area director shall file a monthly report with the commissioner regarding the activities in the area which have occurred in the previous month pursuant to this section. The report shall be written on a form prescribed by the commissioner and shall include, but not be limited to, the number of cases reported under said subsection (k) of said section 51B, the activities of the teams, the availability of services described in the service plans, and the number of family members that are subject of the reports that have been prosecuted. The commissioner, after deleting all personal identifying information, shall combine these area reports into a monthly report that shall be filed with the secretary of health and human services, each district attorney, the joint committee on children, families and persons with disabilities, and the house and senate committees on ways and means.

## **Chapter 119: Section 51E. Reports of injured children; files; confidentiality; penalties**

Section 51E. The department shall maintain a file of the written reports prepared under this section and sections 51A to 51D, inclusive. These written reports shall be confidential. Upon request and with the approval of the commissioner, copies of written reports of initial investigations may be provided to: (i) the child's parent, guardian, or counsel, (ii) the reporting person or agency, (iii) the appropriate review board, (iv) a child welfare agency of another state for the purpose of assisting that agency in determining whether to approve a prospective foster or adoptive parent, or (v) a social worker assigned to the case. No such report shall be made available to any persons other than those specified in this section without the written and informed consent of the child's parent or guardian, the written approval of the commissioner, or an

order of a court of competent jurisdiction. Pursuant to chapter 18C, the child advocate shall have access to these reports.

A child welfare agency of another state may, upon request, and upon the approval of the commissioner, receive a copy of the written report of the initial investigation if the agency has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect.

The name and all other identifying information relating to any child, or to his parents or guardian, shall be removed from said reports 1 year after the department determines that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated, or, if said allegations are substantiated, when the child reaches the age of 18, or 1 year after the date of termination of services to the child or his family, whichever date occurs last; provided, however, that the department may retain information on unsubstantiated reports to assist in future risk and safety assessments of children and families and may release said information to the child welfare agencies of other states upon request of said child welfare agency for the purpose of assisting said child welfare agency in determining whether to approve a prospective foster or adoptive parent.

Any person who permits any information in the files to be released to persons other than those specified in this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 21/2 years, or both.

### **Chapter 119: Section 51F. Central registry of information; confidentiality; penalties**

Section 51F. The department shall maintain a central registry of information sufficient to identify children whose names are reported under sections 51A to 51B. Data and information relating to individual cases in the central registry shall be confidential and shall be made available only with the approval of the commissioner or upon court order; provided, however, that the department, upon request, may release this data and information to a child welfare agency of another state for the purpose of assisting that agency in determining whether to approve a prospective foster or adoptive parent. The commissioner shall establish rules and regulations governing the availability of such data and information. Pursuant to chapter 18C, the child advocate shall have access to the information in the registry.

A child welfare agency of another state may, upon request, and upon the approval of the commissioner, receive information from the central registry if the agency has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect.

The name and all other identifying characteristics relating to any child which is contained in the central registry, or to his parents or guardian, shall be removed 1 year after the department determines, after investigation, that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated or, if said allegations are substantiated, when the child reaches the age of 18, or 1 year after the date of termination of services to the child or his family, whichever date occurs last. If the department determines during the initial screening period of an investigation that said report under section 51A is frivolous, or other absolute determination that abuse or neglect has not taken place, then said report shall be declared as "allegation invalid". If such reports are declared "allegation invalid", the name of the child, or identifying characteristics relating to the child, or the names of his parents or guardian or any other person relevant to the report, shall not be placed in the central registry, nor under any other computerized program utilized in the department. Nothing in this section shall prevent the department from keeping information on unsubstantiated reports to assist in future risk and safety assessments of children and families.



Any person employed in the central registry who permits the data and information stored in the registry to be released without authorization to persons other than those specified in the rules and regulations shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 21/2 years, or both.

**Chapter 119: Section 51G. Severability; secs. 51A—51F.**

Section 51G. Sections fifty-one A to fifty-one F, inclusive, are severable and the invalidity of any of said sections shall not affect the continuing validity of any other of said sections.

**Chapter 119: Section 51H Protective alerts; transport of child to another state or country**

Section 51H. Notwithstanding any general or special law to the contrary, the department may send to, or receive from, any other state or country a protective alert containing any information about a child related to a substantiated report of child abuse or neglect if the department reasonably believes that the child has been or will be transported to another state or country.

**Chapter 119: Section 52. Definitions.**

Section 52. The following words as used in the following sections shall, except as otherwise specifically provided, have the following meanings:

"Court", a division of the juvenile court department.

"Delinquent child", a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth.

"Probation officer", a probation officer or assistant probation officer of the court having jurisdiction of the pending case.

"Punishment as is provided by law", any sentence which may be imposed upon an adult by a justice of the district court or superior court.

"Youthful offender", a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen.

**Chapter 119: Section 53. Liberal construction; nature of proceedings against children.**

Section 53. Sections fifty-two to sixty-three, inclusive, shall be liberally construed so that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings.

**Chapter 119: Section 54 Complaint; indictment; examination of complainant; summons; warrant**

Section 54. If complaint is made to any court that a child between seven and seventeen years of age is a delinquent child, said court shall examine, on oath, the complainant and the witnesses, if any, produced by him, and shall reduce the complaint to writing, and cause it to be subscribed by the complainant.

If said child is under twelve years of age, said court shall first issue a summons requiring him to appear before it at the time and place named therein, and such summons shall be issued in all other cases, instead of a warrant, unless the court has reason to believe that he will not appear upon summons, in which case, or if such a child has been summoned and did not appear, said court may issue a warrant reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to take such child and bring him before said court, to be dealt with according to law, and to summon the witnesses named therein to appear and give evidence at the examination.

The commonwealth may proceed by complaint in juvenile court or in a juvenile session of a district court, as the case may be, or by indictment as provided by chapter two hundred and seventy-seven, if a person is alleged to have committed an offense against a law of the commonwealth while between the ages of fourteen and seventeen which, if he were an adult, would be punishable by imprisonment in the state prison, and the person has previously been committed to the department of youth services, or the offense involves the infliction or threat of serious bodily harm in violation of law or the person has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine. The court shall proceed on the complaint or the indictment, as the case may be, in accordance with sections fifty-five to seventy-two, inclusive. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal proceedings.

**Chapter 119: Section 55. Summoning of parent or guardian.**

Section 55. If a child has been summoned to appear or is brought before such court upon a warrant, as provided in section fifty-four, a summons shall be issued to at least one of its parents, if either of them is known to reside within the commonwealth, and, if there is no such parent, then to its lawful guardian, if there is one known to be so resident, and if not, then to the person with whom such child resides, if known. Said summons shall require the person served to appear at a time and place stated therein, and show cause why such child should not be adjudged a delinquent child and why it is not in such child's best interest that he be removed from his home and whether reasonable efforts were made to prevent or eliminate the need for removal from his home. If there is no such parent, guardian or person who can be summoned as aforesaid, the court may appoint a suitable person to act for such child. A parent, guardian or person with whom such child resides who is summoned to appear before the court to show cause why such child shall not be adjudged a delinquent child by reason of having committed the offense of willful or malicious destruction or wanton destruction of property, in violation of the provisions of section one hundred and twenty-seven or one hundred and twenty-seven A of chapter two hundred and sixty-six, and who willfully fails to so appear shall be punished by a fine of not less than two hundred nor more than three hundred dollars.

If such child is summoned, the time for appearance fixed in the summons to a parent, guardian or other person, as herein provided, shall, when practicable, be that fixed for the appearance of said child.

A summons required by this and said section fifty-four, unless service thereof is waived in writing, shall be served by a constable or police officer, by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person; and said constable or officer shall immediately make return to the court of the time and manner of the service.

If the court shall be of the opinion that the interests of the child require the attendance at any proceedings of an agent of the department of youth services and shall request such attendance by reasonable notice to the commissioner of youth services, such agent shall attend to protect the interests of said child.

**Chapter 119: Section 55A. Jury trials; discovery orders; jury-waived trials; appointment of stenographer.**

Section 55A. Trial of a child complained of as a delinquent child or indicted as a youthful offender in a division of the juvenile court department shall be by a jury, unless the child files a written waiver and consent to be tried by the court without a jury. Such waiver shall not be received unless the child is represented by counsel or has filed, through his parent or guardian, a written waiver of counsel. No decision on such waiver shall be received until after the completion of a pretrial conference and a hearing on the results of such conference and until after the disposition of any pretrial discovery motions and compliance with any order of the court pursuant to said motions. Such waiver shall be filed in accordance with the provisions of section six of chapter two hundred and sixty-three; provided, however, that defense counsel shall execute a certificate signed by said counsel indicating that he has made all the necessary explanations and determinations regarding such waiver. The form of such certificates shall be prescribed by the chief justice for the juvenile court department.

In the juvenile court department upon the motion of a child consistent with criminal procedure, or upon the court's own motion, the judge shall issue an order of discovery requiring the prosecutor to provide in writing any information to which the child is entitled and also requiring that the child be permitted to discover, inspect, and copy any material and relevant evidence, documents, statements or persons, or reports of physical or mental examinations of any person or of scientific tests or experiments, within the possession, custody, or control of the prosecutor or persons under his direction and control. Upon motion of the child the judge shall order the production by the commonwealth of the names and addresses of the prospective witnesses and the production by the probation department of the record of prior convictions of any such witnesses. The commonwealth shall be entitled to reciprocal discovery as set forth in Rule 14 (a) (1) (3) of the Massachusetts Rules of Criminal Procedure.

Trial by jury in the juvenile court department shall be in those jury sessions designated in accordance with section fifty-six. Where the child has properly filed a waiver and consented to be tried without a jury, as hereinbefore provided, trial shall proceed in accordance with the provisions of law applicable to jury-waived trials in the superior court; provided, however, that at the option of the child, the trial may be before a judge who has not rejected an agreed upon recommendation or disposition request made by the child pursuant to the provisions of section fifty-five B. Review in such cases may be had directly by the appeals court, by appeal, report or otherwise in the same manner provided for trials of criminal cases in the superior court.

The justice presiding over such jury-waived trial in the juvenile court department shall have and exercise all of the powers which a justice sitting in the superior court department has and may exercise in the trial and disposition of criminal cases including the power to report questions of law to the appeals court.

The justice presiding at such jury-waived session in the juvenile court department shall, upon the request of the child, appoint a stenographer; provided, however, that where the child claims indigence, such appointment is determined to be reasonably necessary in accordance with the provisions of sections twenty-seven A to twenty-seven G, inclusive, of chapter two hundred and sixty-one. Such stenographer shall be sworn, and shall take stenographic notes of all the testimony given at the trial, and shall provide the parties thereto with a transcript of his notes or any part thereof taken at the trial or hearing for which he shall be paid by the party requesting it at the rate fixed by the chief justice of the juvenile court department; provided, however, that such rate shall not exceed the rate provided pursuant to section eighty-eight of chapter two hundred and twenty-one. Said chief justice may make regulations not inconsistent with law relative to the assignments, duties and services of stenographers appointed for sessions in his department and any other matter relative to stenographers. The compensation and expenses of a stenographer shall be paid by the commonwealth.

The request for the appointment of a stenographer to preserve the testimony at a trial in the juvenile court department shall be given to the clerk of the court by the child in writing no later than forty-eight hours prior to the proceeding for which the stenographer has been requested. The child shall file with such request an affidavit of indigence and request for payment by the commonwealth of the cost of the transcript and the court shall hold a hearing on such request prior to appointing a stenographer, in those cases where the child alleges that he will be unable to pay said cost. Said hearing shall be governed by the provisions of sections twenty-seven A to twenty-seven G, inclusive, of chapter two hundred and sixty-one, and the cost of such transcript shall be considered an extra cost as provided therein. If the court is unable, for any reason, to provide a stenographer, the proceedings may be recorded by electronic means. The original recording of proceedings in the juvenile court department made with a recording device under the exclusive control of the court shall be the official record of such proceedings. Said record or a copy of all or a part thereof, certified by the presiding justice or his designee, to be an accurate electronic reproduction of said record or part thereof, or a typewritten transcript of all or part of said record or copy thereof, certified to be accurate by the court or by the preparer of said transcript, or stipulated to by the parties, shall be admissible in any court as evidence of testimony given wherever proof of such testimony is otherwise competent. The child may request payment by the commonwealth of the cost of said transcript subject to the same provisions regarding a transcript of a stenographer as provided hereinbefore.

### **Chapter 119: Section 55B. Plea; disposition request; pretrial motions.**

Section 55B. A child who is before the juvenile court on a delinquency complaint or an indictment within the court's jurisdiction shall plead not delinquent, or that he should not be adjudged as a youthful offender, as the case may be. Such plea shall be submitted by the child and acted upon by the court; provided, however, that a child with whom the commonwealth cannot reach agreement for a recommended disposition shall be allowed to tender a plea together with a request for a specific disposition. Such request may include any disposition or dispositional terms within the court's jurisdiction, including, unless otherwise prohibited by law, a disposition request that a finding not be entered, but rather the case be continued without a finding to a specific date thereupon to be dismissed, such continuance conditioned upon compliance with specific terms and conditions or that the child be placed on probation pursuant to the provisions of section 57; provided, however, that a complaint alleging a child to be a delinquent child by reason of having violated the provisions of section 13B, 13B ½, 13B ¾, section 22A, 22B, 22C or section 23, 23A, 23B of chapter 265 shall not be placed on file or continued without a finding. If a plea, with an agreed upon recommendation or with a disposition request by the child, is tendered, the court shall inform the child that it will not impose a disposition that exceeds the terms of the agreed upon recommendation or the disposition request by the child, whichever is applicable, without giving the child the right to withdraw the plea.

Notwithstanding the foregoing requirements, if a child attempts to enter a plea or statement consisting of an admission of facts sufficient for a finding of delinquency or adjudication as a youthful offender, or some similar statement, such admission shall be deemed a tender of plea for purposes of the procedures set forth in this section.

Any pretrial motion filed in a delinquency case or case in which the commonwealth has proceeded by indictment pending in the juvenile court and decided before entry of the child's decision on waiver of the right to jury trial shall not be refiled or reheard thereafter, except in the discretion of the court as substantial justice requires. Any such pretrial motion not filed or filed but not decided prior to entry of the child's decision on waiver of the right to jury trial may be filed thereafter but not later than twenty-one days after entry of said decision on waiver of the right to jury trial, except for good cause shown.

### **Chapter 119: Section 56. Adjournments; jury sessions; appointment of stenographer.**

Section 56. Hearings upon cases arising under sections fifty-two to eighty-four, inclusive, may be adjourned from time to time; provided however, that no adjournment shall exceed fifteen days at any one time against the objection of the child. Section thirty-five of chapter two hundred and seventy-six relative to recognizance in cases continued shall apply to cases arising under sections fifty-two to eighty-four, inclusive.

(a) Every division of the juvenile court department shall be authorized to hold jury sessions for the purpose of conducting jury trials of cases commenced in the several courts of offenses over which the juvenile courts have original jurisdiction.

(b) The chief justice for the juvenile court department shall designate at least one division in each county or an adjoining county for the purpose of conducting jury trials.

The chief justice of the juvenile court department may also designate one or more divisions in each county for the purpose of conducting jury-waived trials of cases commenced in any court of said county consistent with the requirements of the proper administration of justice.

(c) A child in any division of the juvenile court who waives his right to jury trial as provided in section fifty-five A shall be provided a jury-waived trial in the same division.

A child in any division of the juvenile court who does not waive his right to jury trial as provided in section fifty-five A shall be provided a jury trial in a jury session in the same division if such session has been established in said division. If such session has not been so established, the child shall be provided a jury trial in a jury session in an adjoining county as designated by the clerk in the division where the case is pending. In cases where the child declines to waive the right to jury trial, the clerk shall forthwith transfer the case for trial in the appropriate jury session. Such transfer shall be governed by procedures to be established by the chief justice for the juvenile court department.

(d) The justice presiding over a jury session shall have and exercise all the powers and duties which a justice sitting in the superior court department has and may exercise in the trial and disposition of criminal cases including the power to report questions of law to the appeals court. No justice so sitting shall act in a case in which he has sat or held an inquest or otherwise taken part in any proceeding therein.

(e) Trials by jury shall proceed in accordance with the provisions of law applicable to trials by jury in the superior court. The commonwealth shall be entitled to as many challenges as equal the whole number to

which all the children in the case are entitled. Trial by jury shall be by juries of six persons, except that in cases where the commonwealth has proceeded by indictment, said child shall be entitled to a jury of twelve.

(f) For the jury sessions, jurors shall be provided by the office of the jury commissioner in accordance with the provisions of chapter two hundred and thirty-four A.

(g) The district attorney for the district in which the alleged offense or offenses occurred shall appear for the commonwealth in the trial of all cases in which the right to jury trial has not been waived and may appear in any other case. The chief justice for the juvenile court department shall arrange for the sittings of the jury sessions and shall assign justices thereto, to the end that speedy trials may be provided. Review may be had directly by the appeals court, by appeal, report or otherwise in the same manner provided for trials of criminal cases in the superior court. A claim of trial by jury under this section may be withdrawn before trial, in which event trial and disposition of the case shall be by a justice in a jury session sitting without a jury.

(h) The justice presiding at such session in the juvenile court department shall, upon request of the child, appoint a stenographer in accordance with section fifty-five A herein.

The request for the appointment of a stenographer to preserve the testimony at a trial in the juvenile court department shall be given to the clerk of the court by the child in writing no later than forty-eight hours prior to the proceeding for which the stenographer has been requested. The child shall file with such request an affidavit of indigence and request for payment by the commonwealth of the cost of the transcript and the court shall hold a hearing on such request prior to appointing a stenographer, in those cases where the child alleges that he will be unable to pay said cost. Said hearing shall be governed by the provisions of sections twenty-seven A to twenty-seven G, inclusive, of chapter two hundred and sixty-one, and the cost of such transcript shall be considered an extra cost as provided therein. If the court is unable, for any reason, to provide a stenographer, the proceedings may be recorded by electronic means. The original recording of proceedings in the juvenile court department made with a recording device under the exclusive control of the court shall be the official record of such proceedings. Said record or a copy of all or a part thereof, certified by the presiding justice or his designee, to be an accurate electronic reproduction of said record or part thereof, or a typewritten transcript of all or part of said record or copy thereof, certified to be accurate by the court or by the preparer of said transcript, or stipulated to by the parties, shall be admissible in any court as evidence of testimony given wherever proof of such testimony is otherwise competent. The child may request payment by the commonwealth of the cost of said transcript subject to the same provisions regarding a transcript of a stenographer as provided hereinbefore.

### **Chapter 119: Section 57. Investigation by probation officer; record of performance; reports.**

Section 57. Every case of a delinquent child shall be investigated by the probation officer, who shall make a report regarding the character of such child, his school record, home surroundings and the previous complaints against him, if any. In every case involving a child attending a special class authorized by law, he shall secure from the bureau of special education a record of performance of said child. He shall be present in court at the trial of the case, and furnish the court with such information and assistance as shall be required. At the end of the probation period of a child who has been placed on probation, the officer in whose care he has been shall make a report as to his conduct during such period.

### **Chapter 119: Section 58. Adjudication as delinquent child or youthful offender**

Section 58. At the hearing of a complaint against a child the court shall hear the testimony of any witnesses who appear and take such evidence relative to the case as shall be produced. If the allegations against a child are proved beyond a reasonable doubt, he may be adjudged a delinquent child, or in lieu thereof, the

court may continue the case without a finding and, with the consent of the child and at least one of the child's parents or guardians, place said child on probation; provided, however, that any such probation may be imposed until such child reaches age eighteen or age nineteen in the case of a child whose case is disposed of after he has attained his eighteenth birthday; provided further, that a complaint alleging a child to be a delinquent child by reason of having violated the provisions of section 13B, 13B ½, 13B ¾, section 22A, 22B, 22C, 23, 23A or 23B of chapter 265 shall not be placed on file or continued without a finding. Said probation may include a requirement, subject to agreement by the child and at least one of the child's parents or guardians, that the child do work or participate in activities of a type and for a period of time deemed appropriate by the court.

If a child is adjudicated a delinquent child on a complaint, the court may place the case on file or may place the child in the care of a probation officer for such time and on such conditions as it deems appropriate or may commit him to the custody of the department of youth services, but the probationary or commitment period shall not be for a period longer than until such child attains the age of eighteen, or nineteen in the case of a child whose case is disposed of after he has attained his eighteenth birthday.

If a child is adjudicated a youthful offender on an indictment, the court may sentence him to such punishment as is provided by law for the offense. The court shall make a written finding, stating its reasons therefor, that the present and long-term public safety would be best protected by:

(a) a sentence provided by law; or

(b) a combination sentence which shall be a commitment to the department of youth services until he reaches the age of twenty-one, and an adult sentence to a house of correction or to the state prison as is provided by law for the offense. The adult sentence shall be suspended pending successful completion of a term of probation, which shall include, but not be limited to, the successful completion of the aforementioned commitment to the department of youth services. Any juvenile receiving a combination sentence shall be under the sole custody and control of the department of youth services unless or until discharged by the department or until the age of twenty-one, whichever occurs first, and thereafter under the supervision of the juvenile court probation department until the age of twenty-one and thereafter by the adult probation department; provided, however, that in no event shall the aggregate sentence imposed on the combination sentence exceed the maximum adult sentence provided by law; or

(c) a commitment to the department of youth services until he reaches the age of twenty-one.

In making such determination the court shall conduct a sentencing recommendation hearing to determine the sentence by which the present and long-term public safety would be best protected. At such hearing, the court shall consider, but not be limited to, the following factors: the nature, circumstances and seriousness of the offense; victim impact statement; a report by a probation officer concerning the history of the youthful offender; the youthful offender's court and delinquency records; the success or lack of success of any past treatment or delinquency dispositions regarding the youthful offender; the nature of services available through the juvenile justice system; the youthful offender's age and maturity; and the likelihood of avoiding future criminal conduct. In addition, the court may consider any other factors it deems relevant

to disposition. No such sentence shall be imposed until a pre-sentence investigation report has been filed by the probation department and made available to the parties no less than seven days prior to sentencing.

A youthful offender who is sentenced as is provided by law either to a state prison or to a house of correction but who has not yet reached his seventeenth birthday shall be held in a youthful offender unit separate from the general population of adult prisoners; provided, however, that such youthful offender shall be classified at a facility other than the reception and diagnostic center at the Massachusetts Correctional Institution, Concord, and shall not be held at the Massachusetts Correctional Institution, Cedar Junction, prior to his seventeenth birthday.

If it is alleged in the complaint upon which the child is so adjudged that a penal law of the commonwealth, a city ordinance or a town by-law has been violated, the court may commit such child to the custody of the commissioner of youth services and authorize him to place such child in the charge of any person, and, if at any time thereafter the child proves unmanageable, to transfer such child to that facility which in the opinion of said commissioner, after study, will best serve the needs of the child. The department of youth services shall provide for the maintenance, in whole or part, of any child so placed in the charge of any person.

Notwithstanding any other provisions of this chapter, a person adjudicated a delinquent child by reason of a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine, shall be committed to the custody of the commissioner of youth services who shall place such child in the custody of a facility supported by the commonwealth for the care, custody and training of such delinquent children for a period of at least one hundred and eighty days or until such child attains his eighteenth birthday, whichever first occurs, provided, however, that said period of time shall not be reduced or suspended.

Upon the second or subsequent violation of said paragraph (a), (c) or (d) of said section ten or ten E of said chapter two hundred and sixty-nine, the commissioner of youth services shall place such child in the custody of a facility supported by the commonwealth for the care, custody and training of such delinquent child for not less than one year; provided, however, that said period of time shall not be reduced or suspended.

The court may make an order for payment by the child's parents or guardian from the child's property, or by any other person responsible for the care and support of said child, to the institution, department, division, organization or person furnishing care and support at times to be stated in an order by the court of sums not exceeding the cost of said support after ability to pay has been determined by the court; provided, however, that no order for the payment of money shall be entered until the person by whom payments are to be made shall have been summoned before the court and given an opportunity to be heard. The court may from time to time, upon petition by, or notice to the person ordered to pay such sums of money, revise or alter such order or make a new order, as the circumstances may require.



The court may commit such delinquent child to the department of youth services, but it shall not commit such child to any institution supported by the commonwealth for the custody, care and training of delinquent children or juvenile offenders.

Except in cases in which the child has attained the age of majority, whenever a court of competent jurisdiction adjudicates a child as delinquent and commits the child to the department of youth services, the court, in order to comply with the requirements contained in the federal Adoption Assistance and Child Welfare Act of 1980 and any amendments thereto, shall receive evidence in order to determine whether continuation of the child in his home is contrary to his best interest, and whether reasonable efforts were made prior to the commitment of the child to the department, to prevent or eliminate the need for removal from his home; or whether an emergency situation existed making such efforts impossible. No such determination shall be made unless the parent or guardian of the delinquent shall have been summoned before the court and, if present, given an opportunity to be heard. The court, in its discretion, may make its determinations concerning said best interest and reasonable efforts in written form, but in the absence of a written determination to the contrary, it shall be presumed that the court did find that continuation of the child in his home was contrary to his best interest and that reasonable efforts to prevent or eliminate the need for removal of the child from his home did occur. Nothing in this section shall diminish the department's responsibility to prevent delinquent acts and to protect the public safety.

**Chapter 119: Section 58A. Repealed, 1948, 310, Sec. 5.**

**Chapter 119: Section 58B Motor vehicle violations; disposition; admissibility of adjudication and disposition as evidence in other proceedings**

Section 58B. If, under the provisions of section fifty-eight, a child is adjudged a delinquent child by reason of having violated any statute, by-law, ordinance or regulation relating to the operation of motor vehicles, the court may place the case on file, or may place the child in the care of a probation officer, or may commit him to the custody of the department of youth services, as provided in section fifty-eight, and may require restitution as provided in section sixty-two; and in addition to or in lieu of such disposition, the court may impose upon such child a fine not exceeding the amount of the fine authorized for the violation of such statute, by-law, ordinance or regulation. Any fine imposed under the authority of this section shall be collected, recovered and paid over in the manner provided by chapters two hundred and seventy-nine and two hundred and eighty; provided, however, that if any child shall neglect, fail or refuse to pay a fine imposed under this section, he may be arrested upon order of the court and brought before the court, which may thereupon place him in the care of a probation officer or commit him to the custody of the department of youth services; but no such child shall be committed to any jail, house of correction, or correctional institution of the commonwealth. The provisions of sections sixty and sixty A shall apply to any case disposed of under this section; provided, however, that the court shall provide the registrar of motor vehicles with an abstract of every such adjudication and disposition, in the manner provided by section twenty-seven of chapter ninety; and provided, further, that such adjudication and disposition shall be admissible as evidence in any proceeding for the revocation or restoration of the child's license or right to operate a motor vehicle and for the cancellation of a motor vehicle insurance policy covering the vehicle operated by such child, and in any action of tort arising out of the negligent operation of a motor vehicle by said child, to the same extent that such evidence would be admissible if said child were an adult.

**Chapter 119: Section 59. Violation of terms of probation.**

Section 59. If a child has been placed in care of a probation officer, said officer, at any time before the final disposition of the case, may arrest such child without a warrant and take him before the court, or the court may issue a warrant for his arrest. When such child is before the court, it may make any disposition of the case which it might have made before said child was placed on probation, or may continue or extend the period of probation.

**Chapter 119: Section 60. Admissibility of adjudication in subsequent proceeding; disqualification for public service.**

Section 60. An adjudication of any child as a delinquent child under sections fifty-two to fifty-nine, inclusive, or any disposition thereunder of any child so adjudicated, or any evidence given in any case arising against any child under said sections fifty-two to fifty-nine, or any records in cases arising against any child under said sections fifty-two to fifty-nine shall not be received in evidence or used against such child for any purpose in any proceedings in any court except in subsequent delinquency or criminal proceedings against the same person; nor shall such adjudication or disposition or evidence operate to disqualify a child in any future examination, appointment, or application for public service under the government either of the commonwealth or of any political subdivision thereof; provided, however, that adjudication of delinquency by reason of the child having committed an offense against the commonwealth may be used for impeachment purposes in subsequent delinquency or criminal proceedings in the same manner and to the same extent as prior criminal convictions.

**Chapter 119: Section 60A. Inspection of records in youthful offender and delinquency cases.**

Section 60A. The records of a youthful offender proceeding conducted pursuant to an indictment shall be open to public inspection in the same manner and to the same extent as adult criminal court records. All other records of the court in cases of delinquency arising under sections fifty-two to fifty-nine, inclusive, shall be withheld from public inspection except with the consent of a justice of such court; provided, however, that such records shall be open, at all reasonable times, to inspection by the child proceeded against, his parents, guardian or attorney; provided further, that nothing herein shall be construed to provide access to privileged or confidential communications and information; and provided further, that said protections shall be construed to include information and communications entered at the indictment.

Notwithstanding the provisions of this section, the name of a child shall be made available to the public by the probation officer without such consent if the child is: alleged to have committed an offense while between his fourteenth and seventeenth birthdays; and has previously been adjudicated delinquent on at least two occasions for acts which would have been punishable by imprisonment in the state prison if such child had been age seventeen or older; and is charged with delinquency by reason of an act which would be punishable by imprisonment in the state prison if such child were age seventeen or older.

**Chapter 119: Section 61. Repealed, 1996, 200, Sec. 7.**

**Chapter 119: Section 62. Restitution or reparation by child to injured person.**

Section 62. If, in adjudging a person a delinquent child, the court finds, as an element of such delinquency, that he has committed an act involving liability in a civil action, and such delinquent child is placed on probation, the court may require, as a condition thereof, that he shall make restitution or reparation to the injured person to such an extent and in such sum as the court determines. If the payment is not made at once, it shall be made to the probation officer, who shall give a receipt therefor, keep a record of the payment, pay the money to said injured person, and keep on file his receipt therefor.

**Chapter 119: Section 63. Inducing or abetting delinquency of child.**

Section 63. Any person who shall be found to have caused, induced, abetted, or encouraged or contributed toward the delinquency of a child, or to have acted in any way tending to cause or induce such delinquency, may be punished by a fine of not more than five hundred dollars or by imprisonment of not more than one year, or both. The court may release on probation under section eighty-seven of chapter two hundred and seventy-six, subject to such orders as it may make as to future conduct tending to cause, induce or contribute to such delinquency, or it may suspend sentence under section one of chapter two hundred and seventy-nine, or before trial, with the defendant's consent, it may allow the defendant to enter into a recognizance, in such penal sum as the court may fix, conditioned to comply with such terms as the court may order for the promotion of the future welfare of the child, and the said case may then be placed on file. The provisions for recognizance in section fifty-six shall be applicable to cases arising hereunder. The divisions of the juvenile court department shall, within their respective territorial limits, have exclusive jurisdiction over complaints alleging violations of this section.

**Chapter 119: Section 63A. Aiding and abetting violation of juvenile court order; concealing or harboring child; penalties; defenses**

Section 63A. Whoever is 19 years of age or older and: (i) knowingly and willfully aids or abets a child under the age of 17, or under the age of 18 and in state custody, to violate an order of a juvenile court; or (ii) knowingly and willfully conceals or harbors a child who has taken flight from the custody of the court, a parent, a legal guardian, the department of children and families or the department of youth services shall be punished by a fine of not more than \$500 or by imprisonment in the house of correction for not more than 1 year, or by both such fine and imprisonment.

It shall be a defense to a violation of clause (ii) if the defendant concealed or harbored a child in the reasonable good faith belief that the child would be at risk of physical or sexual abuse if the child returned to his custodial residence, unless the defendant concealed or harbored such child with intent to abuse the child or if the defendant committed abuse on that child.

The court may release on probation under section 87 of chapter 276, subject to such orders as it may make as to future conduct tending to cause, induce or contribute to a person's status as a child in need of services or delinquency, or it may suspend sentence under section 1 of chapter 279, or before trial, with the defendant's consent, it may allow the defendant to enter into a recognizance, in such penal sum as the court may fix, conditioned to comply with such terms as the court may order for the promotion of the future welfare of the child, and the case may then be placed on file. The provisions for recognizance in section 56 of chapter 276 shall be applicable to cases arising hereunder.

The divisions of the juvenile court department shall, within their respective territorial limits, have exclusive jurisdiction over complaints alleging a violation of this section.

**Chapter 119: Section 64. Powers of commissioner of probation; annual report.**

Section 64. The commissioner of probation may supervise the probation work for delinquent children, and make necessary inquiries in regard to the same, and in his annual report may make such recommendations as he considers advisable for the improvement of methods of dealing with such children.

**Chapter 119: Section 65. Juvenile sessions; presence of minors; exclusion of public.**

Section 65. Courts shall designate suitable times for the hearing of cases of children under seventeen years of age, which shall be called the juvenile session, for which a separate docket and record shall be kept. Said session shall be separate from that for the trial of criminal cases, shall not, except as otherwise expressly provided, be held in conjunction with other business of the court, and shall be held in rooms not used for criminal trials; and in places where no separate juvenile courtroom is provided, hearings, so far as possible, shall be held in chambers. The court shall exclude the general public from juvenile sessions admitting only such persons as may have a direct interest in the case, except in cases where the commonwealth has proceeded by indictment. A complaint under section sixty-three may be heard in such juvenile session.

**Chapter 119: Section 66. Detention of child in police station; commitment to jail, house of correction or state farm.**

Section 66. Except as otherwise provided in section sixty-seven and in section twelve of chapter one hundred and twenty, no child under seventeen years of age shall be detained by the police in a lockup, police station or house of detention pending arraignment, examination or trial by the court. No child under seventeen years of age shall be committed by the court to a jail or house of correction or to the state farm, pending further examination or trial by the court or pending any continuance of his case or, except as otherwise provided in sections fifty-two through eighty-four upon adjudication as a youthful offender.

**Chapter 119: Section 67. Notice of arrest of child to probation officer and parent or guardian; detention.**

Section 67. Except for children in need of service arrested pursuant to section thirty-nine H, whenever a child between seven and seventeen years of age is arrested with or without a warrant, as provided by law, the officer in charge of the police station or town lockup to which the child has been taken shall immediately notify the probation officer of the district court or of the juvenile court, if there is one, within whose judicial district such child was arrested and at least one of the child's parents, or, if there is no parent, the guardian or person with whom it is stated that such child resides, and shall inquire into the case. Pending such notice and inquiry, such child shall be detained. Upon the acceptance by the officer in charge of said police station or town lockup of the written promise of said parent, guardian or any other reputable person to be responsible for the presence of such child in court at the time and place when such child is to appear or upon the receipt of such officer in charge from said probation officer of a request for the release of such child to him, such child shall be released to said person giving such promise or to said probation officer making such request; provided, that, if the arresting officer requests in writing that a child between fourteen and seventeen years of age be detained, and if the court issuing a warrant for the arrest of a child between fourteen and seventeen years of age directs in the warrant that such child shall be held in safekeeping pending his appearance in court, or, if the probation officer shall so direct, such child shall be detained in a police station or town lockup, or place of temporary custody commonly referred to as a detention home of the department of youth services, or any other home approved by the department of youth services pending his appearance in court. In the event any such child is so detained, the officer in charge at the police station or town lockup shall notify the probation officer and parent or parents, guardian, or person with whom it is stated that such child resides of the detention of such child. Nothing contained in this section shall prevent the admitting of such child to bail in accordance with law. Said probation officer or officer in charge at the police station or town lockup shall notify such child and his parent or parents or guardian or person with whom it is stated that such child resides of the time and place of the hearing of his case. No child between fourteen and seventeen years of age shall be detained in a

police station or town lockup unless the detention facilities for children at such police station or town lockup have received the approval in writing of the commissioner of youth services. The department of youth services shall make inspection at least annually of police stations or town lockups wherein children are detained. If no such approved detention facilities exist in any city or town, such city or town may contract with an adjacent city or town for the use of approved detention facilities in order to prevent children who are detained from coming in contact with adult prisoners. Nothing in this section shall permit a child between fourteen and seventeen years of age being detained in a jail or house of correction. A separate and distinct place shall be provided in police stations, town lockups or places of detention for such children.

### **Chapter 119: Section 68. Commitment of children held for examination or trial.**

Section 68. A child who has attained the age of seven but not yet attained the age of seventeen held by the court for further examination, trial or continuance, or for indictment and trial, if unable to furnish bail, shall be committed by the court to the care of the department of youth services or to a probation officer, a parent, guardian, or other responsible person who shall provide for his safekeeping; provided, however, that the appearance of the child at such examination or trial, shall be the responsibility of the court for which he is being held in safekeeping.

The court may recommend that a child who has attained the age of fourteen and who is committed to the care of the department shall be held in a secure detention facility if the court further determines that the child (a) is a fugitive from another jurisdiction on a delinquency petition; or (b) is charged with an offense for which the commonwealth may proceed by indictment in accordance with the provisions of section fifty-four; provided, however, that such child is already detained or on conditional release in conjunction with another delinquency proceeding, or has demonstrated a recent record of willful failure to appear at juvenile court proceedings, or has demonstrated a recent record of violent conduct resulting in physical injury to others.

The court shall forward such recommendation and the reasons therefor, in writing, to the department. Such recommendation shall not be binding upon the department, but if the department chooses not to comply with such recommendation, the department shall inform the court within two business days.

The department may provide special foster homes, and places of temporary custody commonly referred to as detention homes of the department of youth services for the care, maintenance and safekeeping of such children who may be committed by the court to said department under this section; provided, however, that no more than five such children shall be detained in any such special foster home at any one time.

A child between seven and seventeen years of age so committed by the court to the department to await further examination or trial by the court, shall be returned thereto within fifteen days after the date of the order of such commitment, and final disposition of the case shall thereupon be made by adjudication or otherwise, unless, in the opinion of the court, the interest of the child and the public otherwise require.

The provisions of section twenty-four of chapter two hundred and twelve, relative to the precedence of cases of persons actually confined in prison and awaiting trial, shall apply to children held in detention facilities of the department of youth services under this section.

Said probation officer shall have the same authority, rights and powers in relation to a child committed to his care under this section, and in relation to a child released to him as provided in section sixty-seven, as he would have if he were surety on the recognizance of such child.

A person who at the time of the offense had attained the age of fourteen but had not attained the age of seventeen, and who is charged with murder in the first or second degree and is held by the superior court for trial or continuance, or for indictment and trial, if unable to furnish bail, shall be committed by the court to the custody of the sheriff of the county in which the court is situated; provided, however, that the appearance of the person at such examination or trial shall be the responsibility of the court for which he is being held in safekeeping.

**Chapter 119: Section 68A. Diagnostic study by department of youth services; report and recommendations.**

Section 68A. A child between seven and seventeen years of age, held by the court for further examination, trial or continuance, or for indictment and trial, may at the discretion of the court be referred to the department of youth services, any court clinic, or the department of mental health, with its consent, and with the consent of the parents or guardian, for diagnostic study on an inpatient or outpatient basis; and, upon completion of such study, the department of youth services, court clinic or department of mental health, as the case may be, shall forward a report and recommendations to the court. In default of bail, any such child may be committed by the court to the department of youth services for a period not to exceed thirty days while undergoing diagnostic study. At the expiration of such period, such child shall be returned to the court, together with the report and recommendations to the department of youth services.

**Chapter 119: Section 68B. Special foster homes; detention homes; transfer of child.**

Section 68B. The department of youth services may use or provide special foster homes and places of temporary custody commonly referred to as detention homes, at various places in the commonwealth which shall be completely separate from any police station, town lockup or jail, and which shall be used solely for the temporary care, custody and study of children committed to the care of the department of youth services. Nothing in this section shall prevent the department from using or providing alternative placements and employing alternative measures which, in its discretion, will reasonably assure the appearance of the children before the court.

**Chapter 119: Section 68C. Diagnostic services by department of youth services.**

Section 68C. The department of youth services shall maintain and provide diagnostic services for the purpose of providing the diagnostic studies and making the reports and recommendations provided for under section sixty-eight A, and the department may provide offices and facilities for such diagnostic services, at such places in the commonwealth as will best serve the needs of the several courts.

**Chapter 119: Section 69 Information and reports of superintendents of schools and teachers**

Section 69. The superintendent of the public schools in any town, any teacher therein, and any person in charge of a private school, or any teacher therein, shall furnish to any court from time to time any information and reports requested by any justice thereof relating to the attendance, conduct and standing of any pupil enrolled in such school, if said pupil is at the time awaiting examination or trial by the court or is under the supervision of the court.

**Chapter 119: Section 69A. Information of probation officers, police and school authorities.**

Section 69A. When a person has been committed to the department of youth services, the court, the probation officers, and other public and police authorities, the school authorities, and other public officials shall make available to said department all pertinent information in their possession in respect to the case.

**Chapter 119: Section 70. Summoning of parent or guardian during case.**

Section 70. At any time during the pendency of any case before a court or trial justice against a child under seventeen years of age, whether pending adjudication or during continuances or probation or after the case has been taken from the files, the court or trial justice may summon any parent or guardian of said child, or any person with whom the child resides, in the manner provided in section fifty-five.

**Chapter 119: Section 71. Failure to appear on summons; capias.**

Section 71. If any person to whom a summons is issued under the preceding section or section forty-two or fifty-five fails to appear in response to such summons, the court issuing the summons may issue a capias to compel the attendance of such person, and such capias shall be issued and served in the same manner as a capias to compel the attendance of witnesses who have failed to appear on a subpoena issued in behalf of the commonwealth in a criminal case.

**Chapter 119: Section 72. Continuance of jurisdiction of courts in juvenile sessions.**

Section 72. (a) The divisions of the juvenile court department shall continue to have jurisdiction over children who attain their eighteenth birthday pending final adjudication of their cases, including all remands and retrials following appeals from their cases, or during continuances or probation, or after their cases have been placed on file, or for any other proceeding arising out of their cases. Except as provided in subsection (b), nothing herein shall authorize the commitment of a person to the department of youth services after he has attained his nineteenth birthday.

If a child commits an offense prior to his seventeenth birthday, and is not apprehended until between his seventeenth and eighteenth birthday, the court shall deal with such child in the same manner as if he has not attained his seventeenth birthday, and all provisions and rights applicable to a child under seventeen shall apply to such child.

(b) If the commonwealth has proceeded by indictment, the divisions of the juvenile court department shall continue to have jurisdiction over such persons who attain their eighteenth birthday pending the final adjudication of their cases, including all remands and retrials following appeals from their cases, or pending the determination allowed under section 58, or during continuances or probation, or after their cases have been placed on file, or for any other proceeding arising out of their cases. Nothing herein shall authorize the commitment of a youthful offender to the department of youth services after he has attained his twenty-first birthday.

**Chapter 119: Section 72A. Proceedings upon apprehension after eighteenth birthday.**

Section 72A. If a person commits an offense or violation prior to his seventeenth birthday, and is not apprehended until after his eighteenth birthday, the court, after a hearing, shall determine whether there is probable cause to believe that said person committed the offense charged, and shall, in its discretion, either order that the person be discharged, if satisfied that such discharge is consistent with the protection of the public; or, if the court is of the opinion that the interests of the public require that such person be tried for such offense or violation instead of being discharged, the court shall dismiss the delinquency complaint and cause a criminal complaint to be issued. The case shall thereafter proceed according to the usual course of criminal proceedings and in accordance with the provisions of section thirty of chapter two hundred and eighteen and section eighteen of chapter two hundred and seventy-eight. Said hearing shall be held prior to, and separate from, any trial on the merits of the charges alleged.

**Chapter 119: Section 72B. Persons between the ages of fourteen and seventeen convicted of murder; penalties.**

Section 72B. If a person is found guilty of murder in the first degree committed on or after his fourteenth birthday and before his seventeenth birthday under the provisions of section one of chapter two hundred and sixty-five, the superior court shall commit the person to such punishment as is provided by law for the offense.

If a person is found guilty of murder in the second degree committed on or after his fourteenth birthday and before his seventeenth birthday under the provisions of section one of chapter two hundred and sixty-five, the superior court shall commit the person to such punishment as is provided by law. Said person shall be eligible for parole under section one hundred and thirty-three A of chapter one hundred and twenty-seven when such person has served fifteen years of said confinement. Thereafter said person shall be subject to the provisions of law governing the granting of parole permits by the parole board.

The superior court shall not suspend the commitment of a person found guilty of murder in the first or second degree, nor shall the provisions of section one hundred and twenty-nine C or one hundred and twenty-nine D of chapter one hundred and twenty-seven apply to such commitment. In all cases where a person is alleged to have violated section one of chapter two hundred and sixty-five, the person shall have the right to an indictment proceeding under section four of chapter two hundred and sixty-three.

A person who is found guilty of murder and is sentenced to a state prison but who has not yet reached his seventeenth birthday shall be held in a youthful offender unit separate from the general population of adult prisoners; provided, however, that such person shall be classified at a facility other than the reception and diagnostic center at the Massachusetts Correctional Institution, Concord, and shall not be held at the Massachusetts Correctional Institution, Cedar Junction, prior to his seventeenth birthday.

If a defendant is not found guilty of murder in the first or second degree, but is found guilty of a lesser included offense or a criminal offense properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), then the superior court shall make its disposition in accordance with section fifty-eight.

**CRIMINAL PROCEEDINGS.**

**Chapter 119: Section 73. Repealed, 1964, 308, Sec. 5.**

**Chapter 119: Section 74. Limitations on criminal proceedings against children.**

Section 74. Except as hereinafter provided and as provided in sections fifty-two to eighty-four, inclusive, no criminal proceeding shall be begun against any person who prior to his seventeenth birthday commits an offense against the laws of the commonwealth or who violates any city ordinance or town by-law, provided, however, that a criminal complaint alleging violation of any city ordinance or town by-law regulating the operation of motor vehicles, which is not capable of being judicially heard and determined as a civil motor vehicle infraction pursuant to the provisions of chapter ninety C may issue against a child between sixteen and seventeen years of age without first proceeding against him as a delinquent child.

The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of seventeen who is charged with committing murder in the first or second degree. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal proceedings.



**Chapter 119: Section 75. Repealed, 1975, 840, Sec. 2A.**

**Chapter 119: Section 76--82. Repealed, 1964, 308, Sec. 5.**

**Chapter 119: Section 83. Repealed, 1996, 200, Sec. 16.**

**Chapter 119: Section 84. Warrant of commitment to department of youth services.**

Section 84. Whenever a person is committed to the department of youth services by a court under section fifty-six, fifty-eight or eighty-three, a warrant of commitment shall be issued in substance as follows:--

The Commonwealth of Massachusetts.

(County ) ss.

To the Sheriff of the County of ..... or his Deputy, or any Constable or Police Officer in said County, and to the Department of Youth Services at

Greeting:

Whereas, (name of person committed) of ..... in the county of....., a boy (or girl) between seven and seventeen (or eighteen) years of age, has this day been brought before the ..... court of.....by virtue of a summons (or warrant) issued to (against) him (or her) on the complaint of ..... of ..... in the county of.....who therein, upon oath, says that said defendant, at ..... in the county of ..... on the ..... day of ..... in the year one thousand nine hundred and ..... was guilty of ..... as is more fully alleged in said complaint.

And after hearing all matters and things concerning the same, and all persons entitled thereto having been summoned and notified of the pendency of said complaint, as required by law, it is adjudged by said court that said defendant is delinquent and that he (or she) is of the age of ..... years and ..... months, and is a suitable subject for commitment to the custody of the department of youth services, and that his (or her) moral welfare and best interest and the good of society require that he (or she) should be sent thereto for diagnosis, treatment and training, and said court shall also find that reasonable efforts were made to prevent or eliminate the need for the defendant's removal from his home or that an emergency situation made such efforts impossible and it is thereupon ordered by said court that said defendant stand committed to the custody of the department of youth services during his (or her) minority, or until he (or she) be discharged according to law.

You are therefore hereby required, in the name of the Commonwealth of Massachusetts, to take said defendant and him (or her) carry to the department of youth services and him (or her) deliver to the (designated officer) thereof, together with an attested copy thereof, and thereafterward forthwith to return this warrant with your doings thereon into said court.

And you, the department of youth services, are alike required to receive said defendant into your custody, and him (or her) safely keep for diagnosis, treatment, instruction and training until the expiration of said term of his (or her) minority, or he (or she) be discharged according to law.

Witness, ..... at said ..... this ..... day of ..... in the year one thousand nine hundred and .....

Clerk.

A true copy. (Constable of .....)  
Attest: (Sheriff .....)

No variance from said form shall be considered material if it sufficiently appears upon the face thereof that the person is committed by the court in the exercise of the powers conferred by this chapter. The warrant may be executed by any officer qualified to serve civil or criminal process in the county where the case is heard. Accompanying the warrant, the court or magistrate shall transmit to the designated officer of the department of youth services, by the officer serving it, a statement of the substance of the complaint and testimony given in the case, and such other particulars relative to the person committed as can be ascertained.

**Chapter 119: Section 85. Department employees reporting animal cruelty, abuse or neglect; immunity from liability**

Section 85. (a) During any investigation or evaluation reported under section 51A, any employee of the department or person employed pursuant to a contract with the department, when acting in his professional capacity or within the scope of his or her employment, who has knowledge of or observes an animal whom he knows or reasonably suspects has been the victim of animal cruelty, abuse or neglect, may report the known or suspected animal cruelty, abuse or neglect to the entities that investigate reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any local animal control authority.

(b) The report may be made within 2 working days of receiving the information concerning the animal, by facsimile transmission or a written report or by telephone. In cases where an immediate response may be necessary in order to protect the health and safety of the animal, the report should be made by telephone as soon as possible.

(c) When 2 or more employees of the department are present and jointly have knowledge of known or reasonably suspected animal cruelty, abuse or neglect, and where there is agreement among them, a report may be made by 1 person by mutual agreement. Any reporter who has knowledge that the person designated to report has failed to do so may thereafter make the report.

(d) No person making such report shall be liable in any civil or criminal action by reason of such report if it was made in good faith. Any privilege established by sections 135A and 135B of chapter 112 or by section 20B of chapter 233, relating to confidential communications, shall not prohibit the filing of a report pursuant to this section.

(e) Nothing in this section shall impose a duty on the department to investigate known or reasonably suspected animal cruelty, abuse or neglect.

(f) Nothing in this section shall prevent the department, area office or subdivision from entering into an agreement, contract or memorandum of understanding with the entities that investigate reports of animal cruelty, abuse or neglect as described in section 57 of chapter 22C, to require such reports or to engage in training in identification and reporting of animal abuse, cruelty and neglect.

## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 123. MENTAL HEALTH.**

Chapter 123, Section 1. Definitions.

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Chapter 123, Section 8. Proceedings to commit dangerous persons; notice; hearing; orders; jurisdiction.

Chapter 123, Section 8A. [There is no 123:8A.]

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Chapter 123, Section 11. Voluntary admissions; withdrawal; notice; examination; retention.

Chapter 123, Section 12. Emergency restraint of dangerous persons; application for hospitalization; examination.

Chapter 123, Section 13. Transfer of dangerous males to Bridgewater state hospital; retention period; further commitment; procedure.

Chapter 123, Section 14. Transfers from Bridgewater state hospital to other facilities.

Chapter 123, Section 15. Competence to stand trial or criminal responsibility; examination; period of observation; reports; hearing; commitment; delinquents.

Chapter 123, Section 16. Hospitalization of persons incompetent to stand trial or not guilty by reason of mental illness; examination period; commitment; hearing; restrictions; dismissal of criminal charges.

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Chapter 123, Section 28. Violent or unnatural death of patients; notice to district attorney.

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Chapter 123, Section 31. Medicine and drugs; indigent patients.

Chapter 123, Section 32. Charges for care of persons in facilities.

Chapter 123, Section 33. Expenses of apprehension, examination, hearing, commitment or delivery; certification; audit; payment; fees.

Chapter 123, Section 34. Commitment or transfer to veterans administration or other federal agency.

Chapter 123, Section 35. Commitment of alcoholics or substance abusers.

Chapter 123, Section 36. Records; inspection.

Chapter 123, Section 36A. Court records of examination or commitment; privacy.

Chapter 123, Section 36B. Duty of licensed mental health professional to warn potential victims.

## **Chapter 123: Section 1. Definitions.**

Section 1. The following words as used in this section and sections two to thirty-seven, inclusive, shall, unless the context otherwise requires, have the following meanings:

"Commissioner", the commissioner of mental health.

"Department", the department of mental health.

"Dependent funds", those funds which a resident is unable to manage or spend himself as determined by the periodic review.

"District court", the district court within the jurisdiction of which a facility is located.

"Facility", a public or private facility for the care and treatment of mentally ill persons, except for the Bridgewater State Hospital.

"Fiduciary", any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.

"Funds", all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.

"Independent funds", those funds which a resident is able to manage or spend himself as determined by the periodic review.

"Licensed mental health professional", any person who holds himself out to the general public as one providing mental health services and who is required pursuant to such practice to obtain a license from the commonwealth.

"Likelihood of serious harm", (1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

"Patient", any person with whom a licensed mental health professional has established a mental health professional-patient relationship.

"Psychiatric nurse", a nurse licensed pursuant to section seventy-four of chapter one hundred and twelve who specializes in mental health or psychiatric nursing.

"Psychiatrist", a physician licensed pursuant to section two of chapter one hundred and twelve who specializes in the practice of psychiatry.

"Psychologist", an individual licensed pursuant to section one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve.

"Qualified physician", a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department; provided that different qualifications may be established for different purposes of this chapter. A qualified physician need not be an employee of the department or of any facility of the department.

"Qualified psychiatric nurse mental health clinical specialist", a psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section eighty B of chapter one hundred and twelve who is designated by and meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychiatric nurse mental health clinical specialist need not be an employee of the department or of any facility of the department.

"Qualified psychologist", a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychologist need not be an employee of the department or of any facility of the department.

"Reasonable precautions", any licensed mental health professional shall be deemed to have taken reasonable precautions, as that term is used in section thirty-six B, if such professional makes reasonable efforts to take one or more of the following actions as would be taken by a reasonably prudent member of his profession under the same or similar circumstances:--

- (a) communicates a threat of death or serious bodily injury to the reasonably identified victim or victims;
- (b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;
- (c) arranges for the patient to be hospitalized voluntarily;
- (d) takes appropriate steps, within the legal scope of practice of his profession, to initiate proceedings for involuntary hospitalization.

"Restraint", bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of an inpatient or resident in his room for the night, or any other means which unreasonably limit freedom of movement.

"Social worker", an individual licensed pursuant to sections one hundred and thirty to one hundred and thirty-two, inclusive, of chapter one hundred and twelve.

"Superintendent", the superintendent or other head of a public or private facility.

### **Chapter 123: Section 2. Mental health; regulations.**

Section 2. The department shall, in accordance with section two of chapter thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of mentally ill persons in departmental facilities. Said regulations shall be adaptable to changing conditions and to advances in methods of care and treatment of the mentally ill. Said regulations (1) shall include, but not necessarily be limited to, provisions for inpatient care, both during the day and at night, halfway house services, family care, aftercare and home treatment, (2) shall define the categories of mental illness for the purpose of this chapter, and (3) may provide for different procedures for specific types of patients or for particular facilities.

### **Chapter 123: Section 3. Transfers; notice; emergencies.**

Section 3. The department may transfer any person from any facility to any other facility which the department determines is suitable for the care and treatment of such person; provided that no transfer to a private facility shall occur except with the approval of the superintendent thereof. At least six days before

a transfer from a facility occurs, the superintendent shall give written notice thereof to the person and to the nearest relative, unless said person knowingly objects, or guardian of such person; provided, however, if the transfer must be made immediately because of an emergency, such notice shall be given within twenty-four hours after the transfer. Except in emergency cases, no person who at any time prior to transfer has given notice of his intention to leave a facility under the provisions of section eleven shall be transferred until a final determination has been made as to whether such person should be retained in a facility.

#### **Chapter 123: Section 4. Periodic review; notice.**

Section 4. Each person within the care of the department and each person at the Bridgewater state hospital under the provisions of this chapter relative to the mentally ill shall be the subject of a periodic review under the supervision of the superintendent, if said person is in a department facility, or of the medical director if said person is at the Bridgewater state hospital, which shall include, but not necessarily be limited to, (1) a thorough clinical examination, (2) an evaluation of the legal competency of the person and the necessity or advisability of having a guardian or conservator appointed or removed, (3) a consideration of all possible alternatives to continued hospitalization or residential care including, but not necessarily limited to, a determination of the person's relationship to the community and to his family, or his employment possibilities, and of available community resources, foster care and convalescent facilities, and (4) unless a guardian or conservator has been appointed, an evaluation of each person who is an inpatient or resident of a facility in order to determine how much of his funds shall be designated as dependent funds and how much as independent funds, and the formulation and maintenance of a financial plan for the use of his dependent funds. Said periodic review shall take place at least upon admission, once during the first three months after admission, once during the second three months after admission and annually thereafter. Said person shall be given a physical examination by a physician licensed under the provisions of chapter one hundred and twelve at least once in every twelve-month period during which he is resident in said departmental facility or at the Bridgewater state hospital.

The superintendent or the medical director at the Bridgewater state hospital shall give written notice to said person and his guardian, or, if there is no such guardian and the mentally ill person does not knowingly object, his nearest relative prior to any such review which is made subsequent to admission. The social service department of the facility or of the Bridgewater state hospital shall take part in the review and may utilize community resources, including the area-based community mental health programs. The results of each review shall become part of the official record of the person reviewed.

If the mentally ill person is in need of further care and treatment, the superintendent or said medical director shall notify him and his guardian, or, if there is no such guardian and the mentally ill person does not knowingly object, his nearest relative, of that fact, and of his right to leave the facility or said hospital if he was not committed under a court order. If said mentally ill person was not committed under a court order and does not choose further treatment as an inpatient, within fourteen days of said notification he shall be discharged or be made the subject of a petition for a court ordered commitment. Following any review under the provisions of this section, or at any other time, any patient who is no longer in need of care as an inpatient shall be discharged or placed on interim community leave.

#### **Chapter 123: Section 5. Commitment or retention hearings; right to counsel; medical examination; notice.**

Section 5. Whenever the provisions of this chapter require that a hearing be conducted in any court for the commitment or further retention of a person to a facility or to the Bridgewater state hospital or for medical treatment including treatment with antipsychotic medication, it shall be held as hereinafter

provided. Such person shall have the right to be represented by counsel and shall have the right to present independent testimony. The court shall appoint counsel for such person whom it finds to be indigent and who is not represented by counsel, unless such person refuses the appointment of counsel. The court may provide an independent medical examination for such indigent person upon request of his counsel or upon his request if he is not represented by counsel. The person shall be allowed not less than two days after the appearance of his counsel in which to prepare his case and a hearing shall be conducted forthwith after such period unless counsel requests a delay. Notice of the time and place of hearing shall be furnished by the court to the department, the person, his counsel, and his nearest relative or guardian. The court may hold the hearing at the facility or said hospital.

### **Chapter 123: Section 6. Retention of persons; validity of orders; hearing.**

Section 6. (a) No person shall be retained at a facility or at the Bridgewater state hospital except under the provisions of paragraph (a) of section ten, the provisions of paragraphs (a), (b), and (c) of section twelve, section thirteen, paragraph (e) of section sixteen and section thirty-five or except under a court order or except during the pendency of a petition for commitment or to the pendency of a request under section fourteen. A court order of commitment to a facility or to the Bridgewater state hospital shall be valid for the period stipulated in this chapter or, if no such period is so stipulated, for one year. A petition for the commitment of a person may not be issued except as authorized under the provisions of this chapter.

(b) Following the filing of a petition for a commitment to a facility or to the Bridgewater state hospital, a hearing shall be held unless waived in writing by the person after consultation with his counsel. In the event the hearing is waived, the person may request a hearing for good cause shown at any time during the period of commitment.

### **Chapter 123: Section 7. Commitment and retention of dangerous persons; petition; notice; hearing**

Section 7. (a) The superintendent of a facility may petition the district court or the division of the juvenile court department in whose jurisdiction the facility is located for the commitment to said facility and retention of any patient at said facility whom said superintendent determines that the failure to hospitalize would create a likelihood of serious harm by reason of mental illness.

(b) The medical director of the Bridgewater state hospital, the commissioner of mental health, or with the approval of the commissioner of mental health, the superintendent of a facility, may petition the district court or the division of the juvenile court department in whose jurisdiction the facility or hospital is located for the commitment to the Bridgewater state hospital of any male patient at said facility or hospital when it is determined that the failure to hospitalize in strict security would create a likelihood of serious harm by reason of mental illness.

(c) Whenever a court receives a petition filed under any provisions of this chapter for an order of commitment of a person to a facility or to the Bridgewater state hospital, such court shall notify the person, and his nearest relative or guardian, of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing on a petition brought for commitment pursuant to paragraph (e) of section 15, and sections 16 and 18, or for a subsequent commitment pursuant to paragraph (d) of section 8 shall be commenced within 14 days of the filing of the petition, unless a delay is requested by the person or his counsel. For all other persons, the hearing shall be commenced within 5 days of the filing of the petition, unless a delay is requested by the person or his counsel. The periods of time prescribed or allowed under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

### **Chapter 123: Section 8. Proceedings to commit dangerous persons; notice; hearing;**

**orders; jurisdiction.**

Section 8. (a) After a hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at a facility or shall not renew such order unless it finds after a hearing that (1) such person is mentally ill, and (2) the discharge of such person from a facility would create a likelihood of serious harm.

(b) After hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at the Bridgewater state hospital or shall not renew such order unless it finds that (1) such person is mentally ill; (2) such person is not a proper subject for commitment to any facility of the department; and (3) the failure to retain such person in strict custody would create a likelihood of serious harm. If the court is unable to make the findings required by this paragraph, but makes the findings required by paragraph (a), the court shall order the commitment of the person to a facility designated by the department.

(c) The court shall render its decision on the petition within ten days of the completion of the hearing, provided, that for reasons stated in writing by the court, the administrative justice for the district court department may extend said ten day period.

(d) The first order of commitment of a person under this section shall be valid for a period of six months and all subsequent commitments shall be valid for a period of one year; provided that if such commitments occur at the expiration of a commitment under any other section of this chapter, other than a commitment for observation, the first order of commitment shall be valid for a period of one year; and provided further, that the first order of commitment to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a period of six months. If no hearing is held before the expiration of the six months commitment, the court may not recommit the person without a hearing.

(e) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill and that the discharge of the person from a facility would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over the commitment of the person may order the commitment of the person to such facility.

(f) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill, that the person is not a proper subject for commitment to any facility of the department and that the failure to retain said person in strict security would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over a facility, or the Brockton district court if a person is retained in the Bridgewater state hospital, may order the commitment of the person to said hospital.

**Chapter 123: Section 8A. [There is no Chapter 123: Section 8A.]**

**Chapter 123: Section 8B. Treatment of committed persons with antipsychotic medication; petition; notice; hearing; guardian.**

Section 8B. (a) With respect to any patient who is the subject of a petition for a commitment or an order of a commitment for care and treatment under the provisions of sections seven, eight, fifteen, sixteen or eighteen, the superintendent of a facility or medical director of the Bridgewater state hospital may further petition the district court or the division of the juvenile court department in whose jurisdiction the facility is located (i) to adjudicate the patient incapable of making informed decisions about proposed medical



treatment, (ii) to authorize, by an adjudication of substituted judgment, treatment with antipsychotic medications, and (iii) to authorize according to the applicable legal standards such other medical treatment as may be necessary for the treatment of mental illness.

(b) A petition filed under this section shall be separate from any pending petition for commitment and shall not be heard or otherwise considered by the court unless the court has first issued an order of commitment on the pending petition for commitment.

(c) Whenever a court receives a petition filed under the provisions of this section, such court shall notify the person, and his nearest relative or guardian of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing shall be commenced within fourteen days of the filing of the petition unless a delay is requested by the person or his counsel, provided that the commencement of such hearing shall not be delayed beyond the date of the hearing on the commitment petition if the petition was filed concurrently with a petition for commitment.

(d) After a hearing on the petition regarding antipsychotic medication treatment the court shall not authorize medical treatment unless it (i) specifically finds that the person is incapable of making informed decisions concerning the proposed medical treatment, (ii) upon application of the legal substituted judgment standard, specifically finds that the patient would accept such treatment if competent, and (iii) specifically approves and authorizes a written substituted judgment treatment plan. The court may base its findings exclusively upon affidavits and other documentary evidence if it (i) determines, after careful inquiry and upon representations of counsel, that there are not contested issues of fact and (ii) includes in its findings the reasons that oral testimony was not required.

(e) The court may delegate to a guardian who has been duly appointed by a court of competent jurisdiction the authority to monitor the antipsychotic medication treatment process to ensure that an antipsychotic medication treatment plan is followed, provided such a guardian is readily available for such purpose. Approval of a treatment plan shall not be withheld, however, because such a guardian is not available to perform such monitoring. In such circumstances, the court shall monitor the treatment process to ensure that the treatment plan is followed.

(f) Any authorization for treatment that is ordered pursuant to the provisions of this section shall expire at the same time as the expiration of the order of commitment that was in effect when the authorization for treatment was ordered; provided that subsequent authorizations may be ordered and any party may at any time petition the court for modification of a medical treatment authorization that has been ordered pursuant to the standards and procedures established in this section.

(g) An adjudication of competency or incompetency with respect to treatment for mental illness by a court pursuant to this section shall be binding upon the juvenile court department in any subsequent guardianship proceedings only with respect to matters which were the subject of the district court or juvenile court department adjudication.

(h) Any privilege established by section one hundred and thirty-five of chapter one hundred and twelve or by section twenty B of chapter two hundred and thirty-three, relating to confidential communications, shall not prohibit the filing of reports or affidavits, or the giving of testimony, pursuant to this section, for the purpose of obtaining treatment of a patient, provided that such patient has been informed prior to making such communications that they may be used for such purpose and has waived the privilege.

**Chapter 123: Section 9. Review of matters of law; application for discharge; notice; hearing.**

Section 9. (a) Matters of law arising in commitment hearings, antipsychotic medication hearings or incompetency for trial proceedings in a district court may be reviewed by the appellate division of the district courts in the same manner as the civil cases generally.

(b) Any person may make written application to a justice of superior court at any time and in any county, stating that he believes or has reason to believe that a person named in such application is retained in a facility or the Bridgewater state hospital, who should no longer be so retained, or that a person named in such application is the subject of a medical treatment order issued by a district court or a division of the juvenile court department and should not be so treated, giving the names of all persons interested in his confinement or medical treatment and requesting his discharge or other relief. The justice within seven days thereof shall order notice of the time and place for hearing to be given to the superintendent or medical director and to such other persons as he considers proper; and such hearing shall be given promptly before a justice of the superior court in any county. The justice shall appoint an attorney to represent any applicant whom he finds to be indigent. The alleged mentally ill person may be brought before the justice at the hearing upon a writ of habeas corpus, upon a request approved by the justice. Pending the decision of the court such person may be retained in the custody of the superintendent or medical director. If the justice decides that the person is not mentally ill or that failure to retain the person in a facility or the Bridgewater state hospital would not create a likelihood of serious harm; has not engaged in repeated and recent incidents of serious self-destructive behavior or assaultive behavior as an inpatient at a facility or an inmate of a place of detention; can be properly treated in any other facility licensed, operated or regulated by the department, said person shall be discharged. If the justice decides that a patient at the Bridgewater state hospital does not require strict security, he shall be transferred to a facility. If the justice decides that a person who is the subject of a medical treatment order issued by a district court or a division of the juvenile court department pursuant to section eight B should not be treated, the justice shall issue an appropriate order modifying or vacating such order and, where such previous order is modified, the court shall monitor said modified order by means of a guardian or otherwise as provided in paragraph (e) of section eight B.

### **Chapter 123: Section 10. Voluntary admissions; consultation with attorney; discharge; outpatients; veterans.**

Section 10. (a) Pursuant to departmental regulations on admission procedures, the superintendent may receive and retain on a voluntary basis any person providing the person is in need of care and treatment and providing the admitting facility is suitable for such care and treatment. The application may be made (1) by a person who has attained the age of sixteen, (2) by a parent or guardian of a person on behalf of a person under the age of eighteen years, and (3) by the guardian of a person on behalf of a person under his guardianship. Prior to accepting an application for a voluntary admission, the superintendent shall afford the person making the application the opportunity for consultation with an attorney, or with a person who is working under the supervision of an attorney, concerning the legal effect of a voluntary admission. The superintendent may discharge any person admitted under the provisions of this paragraph at any time he deems such discharge in the best interest of such person, provided, however, that if a parent or guardian made the application for admission, fourteen days' notice shall be given to such parent or guardian prior to such discharge.

(b) Pursuant to departmental regulations, the superintendent of a facility may treat persons as outpatients providing application for outpatient treatment is made in accordance with the application provisions of paragraph (a). The superintendent may, in the best interest of the person, discontinue the outpatient treatment of a person at any time.

(c) The chief officer of any facility of the Veterans Administration within the commonwealth may admit eligible veterans under the provisions of this chapter and thereupon shall be vested with the same powers as the department has under this chapter with respect to retention or discharge.

**Chapter 123: Section 11. Voluntary admissions; withdrawal; notice; examination; retention.**

Section 11. Any person retained in a facility under the provisions of paragraph (a) of section ten shall be free to leave such facility at any time, and any parent or guardian who requested the admission of such person may withdraw such person at any time, upon giving written notice to the superintendent. The superintendent may restrict the right to leave or withdraw to normal working hours and weekdays and, in his discretion, may require persons or the parents or guardians of persons to give three days written notice of their intention to leave or withdraw. Where persons or their parents or guardians are required to give three days notice of intention to leave or withdraw, an examination of such persons may be conducted to determine their clinical progress, their suitability for discharge and to investigate other aspects of their case including their legal competency and their family, home or community situation in the interest of discharging them from the facility. Such persons may be retained at the facility beyond the expiration of the three day notice period if, prior to the expiration of the said three day notice period, the superintendent files with the district court a petition for the commitment of such person at the said facility. Before accepting an application for voluntary admission where the superintendent may require three days written notice of intention to leave or withdraw, the admitting or treating physician shall assess the person's capacity to understand that: (i) the person is agreeing to stay or remain at the hospital; (ii) the person is agreeing to accept treatment; (iii) the person is required to provide the facility with three days written advance notice of the person's intention to leave the facility; and (iv) the facility may petition a court for an extended commitment of the person and that he may be held at the facility until the petition is heard by the court. If the physician determines that the person lacks the capacity to understand these facts and consequences of hospitalization, the application shall not be accepted.

**Chapter 123: Section 12. Emergency restraint of dangerous persons; application for hospitalization; examination.**

Section 12. (a) Any physician who is licensed pursuant to section 2 of chapter 112 or qualified psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section 80B of said chapter 112 or a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department. If an examination is not possible because of the emergency nature of the case and because of the refusal of the person to consent to such examination, the physician, qualified psychologist, qualified psychiatric nurse mental health clinical specialist or licensed independent clinical social worker on the basis of the facts and circumstances may determine that hospitalization is necessary and may apply therefore. In an emergency situation, if a physician, qualified psychologist, qualified psychiatric nurse mental health clinical specialist or licensed independent clinical social worker is not available, a police officer, who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a 3-day period at a public facility or a private facility authorized for such purpose by the department. An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information which may assist the admitting physician or physicians. Whenever practicable, prior to transporting such person, the applicant shall telephone or otherwise communicate

with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and also to give notice of any restraint to be used and to determine whether such restraint is necessary.

(b) Only if the application for hospitalization under the provisions of this section is made by a physician specifically designated to have the authority to admit to a facility in accordance with the regulations of the department, shall such person be admitted to the facility immediately after his reception. If the application is made by someone other than a designated physician, such person shall be given a psychiatric examination by a designated physician immediately after his reception at such facility. If the physician determines that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness he may admit such person to the facility for care and treatment.

Upon admission of a person under the provisions of this subsection, the facility shall inform the person that it shall, upon such person's request, notify the committee for public counsel services of the name and location of the person admitted. Said committee for public counsel services shall forthwith appoint an attorney who shall meet with the person. If the appointed attorney determines that the person voluntarily and knowingly waives the right to be represented, or is presently represented or will be represented by another attorney, the appointed attorney shall so notify said committee for public counsel services, which shall withdraw the appointment.

Any person admitted under the provisions of this subsection, who has reason to believe that such admission is the result of an abuse or misuse of the provisions of this subsection, may request, or request through counsel an emergency hearing in the district court in whose jurisdiction the facility is located, and unless a delay is requested by the person or through counsel, the district court shall hold such hearing on the day the request is filed with the court or not later than the next business day.

(c) No person shall be admitted to a facility under the provisions of this section unless he, or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary admission under the provisions of paragraph (a) of section ten and unless he, or such parent or legal guardian has been informed (1) that he has a right to such voluntary admission, and (2) that the period of hospitalization under the provisions of this section cannot exceed three days. At any time during such period of hospitalization, the superintendent may discharge such person if he determines that such person is not in need of care and treatment.

(d) A person shall be discharged at the end of the three day period unless the superintendent applies for a commitment under the provisions of sections seven and eight of this chapter or the person remains on a voluntary status.

(e) Any person may make application to a district court justice or a justice of the juvenile court department for a three day commitment to a facility of a mentally ill person whom the failure to confine would cause a likelihood of serious harm. The court shall appoint counsel to represent said person. After hearing such evidence as he may consider sufficient, a district court justice or a justice of the juvenile court department may issue a warrant for the apprehension and appearance before him of the alleged mentally ill person, if in his judgment the condition or conduct of such person makes such action necessary or proper. Following apprehension, the court shall have the person examined by a physician designated to have the authority to admit to a facility or examined by a qualified psychologist in accordance with the regulations of the department. If said physician or qualified psychologist reports that the failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, the court may order the person committed to a facility for a period not to exceed three days, but the superintendent may discharge him at any time within the three day period. The periods of time prescribed or allowed under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

**Chapter 123: Section 13. Transfer of dangerous males to Bridgewater state hospital; retention period; further commitment; procedure.**

Section 13. If the superintendent of any facility determines that failure to retain a male resident therein in strict security would create a likelihood of serious harm by reason of mental illness and that the person's violent behavior constitutes an emergency, he may, with the consent of the commissioner, transfer the person to the Bridgewater state hospital for a period not to exceed five days. At the end of the five days the person shall be returned to the facility unless before the end of the five day period, the superintendent of the facility or medical director of the Bridgewater state hospital has filed a petition for his commitment to the Bridgewater state hospital under sections seven and eight. Such commitment shall not be ordered without a hearing. Such petition shall be brought in the district court of Brockton unless already filed in some other court before the emergency transfer.

**Chapter 123: Section 14. Transfers from Bridgewater state hospital to other facilities.**

Section 14. Whenever the medical director of the Bridgewater state hospital certifies that the failure to retain any person in strict security would not create a likelihood of serious harm by reason of mental illness but that such person is in need of further care and treatment in a facility, he shall request the commission to transfer such person to a facility designated by the commissioner. Within thirty days of the receipt of such request the commissioner shall execute the transfer, unless within said period he files a petition under sections seven and eight for the further commitment of the person to the Bridgewater state hospital.

**Chapter 123: Section 15. Competence to stand trial or criminal responsibility; examination; period of observation; reports; hearing; commitment; delinquents.**

Section 15. (a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.

(b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a public facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with, which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty day period, an examining qualified physician or an examining qualified psychologist believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty day period, specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and

treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(c) At the conclusion of the examination or the observation period, the examining physician or psychologist shall forthwith give to the court written signed reports of their findings, including the clinical findings bearing on the issue of competence to stand trial or criminal responsibility. Such reports shall also contain an opinion, supported by clinical findings, as to whether the defendant is in need of treatment and care offered by the department.

(d) If on the basis of such reports the court is satisfied that the defendant is competent to stand trial, the case shall continue according to the usual course of criminal proceedings; otherwise the court shall hold a hearing on whether the defendant is competent to stand trial; provided that at any time before trial any party to the case may request a hearing on whether the defendant is competent to stand trial. A finding of incompetency shall require a preponderance of the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

(e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may order a psychiatric or other clinical examination and, after such examination, it may also order a period of observation in a facility, or at the Bridgewater state hospital if the court determines that strict security is required and if such person is male. The purpose of such observation or examination shall be to aid the court in sentencing. Such period of observation or examination shall not exceed forty days. During such period of observation, the superintendent or medical director may petition the court for commitment of such person. The court, after imposing sentence on said person, may hear the petition as provided in section eighteen, and if the court makes necessary findings as set forth in section eight, it may in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of commitment shall be valid for a period of six months. All subsequent proceedings for commitment shall take place under the provisions of said section eighteen in the district court which has jurisdiction of the facility or hospital. A person committed to a facility or Bridgewater state hospital pursuant to this section shall have said time credited against the sentence imposed as provided in paragraph (c) of said section eighteen.

(f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section, a court may order a psychiatric or psychological examination or a period of observation for an alleged delinquent in a facility to aid the court in its disposition. Such period shall not exceed forty days.

**Chapter 123: Section 16. Hospitalization of persons incompetent to stand trial or not guilty by reason of mental illness; examination period; commitment; hearing; restrictions; dismissal of criminal charges.**

Section 16. (a) The court having jurisdiction over the criminal proceedings may order that a person who has been found incompetent to stand trial or not guilty by reason of mental illness or mental defect in such proceedings be hospitalized at a facility for a period of forty days for observation and examination; provided that, if the defendant is a male and if the court determines that the failure to retain him in strict security would create a likelihood of serious harm by reason of mental illness, or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and provided, further, that the combined periods of hospitalization under the provisions of this section and paragraph (b) of section fifteen shall not exceed fifty days.

(b) During the period of observation of a person believed to be incompetent to stand trial or within sixty days after a person is found to be incompetent to stand trial or not guilty of any crime by reason of mental

illness or other mental defect, the district attorney, the superintendent of a facility or the medical director of the Bridgewater state hospital may petition the court having jurisdiction of the criminal case for the commitment of the person to a facility or to the Bridgewater state hospital. However, the petition for the commitment of an untried defendant shall be heard only if the defendant is found incompetent to stand trial, or if the criminal charges are dismissed after commitment. If the court makes the findings required by paragraph (a) of section eight it shall order the person committed to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall be dismissed and the person discharged. An order of commitment under the provisions of this paragraph shall be valid for six months. In the event a period of hospitalization under the provisions of paragraph (a) has expired, or in the event no such period of examination has been ordered, the court may order the temporary detention of such person in a jail, house of correction, facility or the Bridgewater state hospital until such time as the findings required by this paragraph are made or a determination is made that such findings cannot be made.

(c) After the expiration of a commitment under paragraph (b) of this section, a person may be committed for additional one year periods under the provisions of sections seven and eight of this chapter, but no untried defendant shall be so committed unless in addition to the findings required by sections seven and eight the court also finds said defendant is incompetent to stand trial. If the person is not found incompetent, the court shall notify the court with jurisdiction of the criminal charges, which court shall thereupon order the defendant returned to its custody for the resumption of criminal proceedings. All subsequent proceedings for the further commitment of a person committed under this section shall be in the court which has jurisdiction of the facility or hospital.

(d) The district attorney for the district within which the alleged crime or crimes occurred shall be notified of any hearing conducted for a person under the provisions of this section or any subsequent hearing for such person conducted under the provisions of this chapter relative to the commitment of the mentally ill and shall have the right to be heard at such hearings.

(e) Any person committed to a facility under the provisions of this section may be restricted in his movements to the buildings and grounds of the facility at which he is committed by the court which ordered the commitment. If such restrictions are ordered, they shall not be removed except with the approval of the court. In the event the superintendent communicates his intention to remove or modify such restriction in writing to the court and within fourteen days the court does not make written objection thereto, such restrictions shall be removed by the superintendent. If the superintendent or medical director of the Bridgewater state hospital intends to discharge a person committed under this section or at the end of a period of commitment intends not to petition for his further commitment, he shall notify the court and district attorney which have or had jurisdiction of the criminal case. Within thirty days of the receipt of such notice, the district attorney may petition for commitment under the provisions of paragraph (c). During such thirty day period, the person shall be held at the facility or hospital. This paragraph shall not apply to persons originally committed after a finding of incompetence to stand trial whose criminal charges have been dismissed.

(f) If a person is found incompetent to stand trial, the court shall send notice to the department of correction which shall compute the date of the expiration of the period of time equal to the time of imprisonment which the person would have had to serve prior to becoming eligible for parole if he had been convicted of the most serious crime with which he was charged in court and sentenced to the maximum sentence he could have received, if so convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be regarded as one half of the maximum sentence potential sentence. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B, and one hundred and twenty-nine C of chapter one hundred and twenty-seven shall be applied to reduce such period of time. On the final date of such period,

the court shall dismiss the criminal charges against such person, or the court in the interest of justice may dismiss the criminal charges against such person prior to the expiration of such period.

**Chapter 123: Section 17. Periodic review of incompetence to stand trial; petition; hearing; continued treatment; defense to charges; release.**

Section 17. (a) The periodic review of a person found incompetent to stand trial shall include a clinical opinion with regard to the person's competence to stand trial, which opinion shall be noted in writing on the patient's record. If any person found incompetent to stand trial is determined by the superintendent of the facility or the medical director of the Bridgewater state hospital to be no longer incompetent, the superintendent or medical director shall notify the court, which shall without delay hold a hearing on the person's competency to stand trial. Any person found incompetent to stand trial may at any time petition the court for a hearing on his competency. Whenever a hearing is held and the court finds that the person is competent to stand trial, his commitment, if any, to a facility or to the Bridgewater state hospital shall be terminated and he shall be returned to the custody of the court for trial. However, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(b) If either a person or counsel of a person who has been found to be incompetent to stand trial believes that he can establish a defense of not guilty to the charges pending against the person other than the defense of not guilty by reason of mental illness or mental defect, he may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. The court may require counsel for the defendant to support the request by affidavit or other evidence. If the court in its discretion grants such a request, the evidence of the defendant and of the commonwealth shall be heard by the court sitting without a jury. If after hearing such petition the court finds a lack of substantial evidence to support a conviction it shall dismiss the indictment or other charges or find them defective or insufficient and order the release of the defendant from criminal custody.

(c) Notwithstanding any finding of incompetence to stand trial under the provisions of this chapter, the court having jurisdiction may, at any appropriate stage of the criminal proceedings, allow a defendant to be released with or without bail.

**Chapter 123: Section 18. Hospitalization of mentally ill prisoners; examination; reports; hearing; commitment; voluntary admission; reduction of sentence; discharge.**

Section 18. (a) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or psychologist, designated by the department as qualified to perform such examination. Said physician or psychologist shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal case. Such report shall include an opinion, with reasons therefore, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report shall be signed by the physician or psychologist conducting such examination, and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility or, if a male, the Bridgewater state hospital by reason of mental illness.



The person in charge of the place of detention shall have the same right as a superintendent of a facility and the medical director of the Bridgewater state hospital to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital; provided, however, that, notwithstanding the court's failure, after an initial hearing or after any subsequent hearing, to make a finding required for commitment to the Bridgewater state hospital, the prisoner shall be confined at said hospital if the findings required for commitment to a facility are made and if the commissioner of correction certifies to the court that confinement of the prisoner at said hospital is necessary to insure his continued retention in custody. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

(b) Notwithstanding any contrary provision of general or special law, a prisoner who is retained in any place of detention within the commonwealth and who is in need of care and treatment in a facility may, with the approval of the person in charge of such place of detention apply for voluntary admission under the provisions of paragraph (a) of section ten.

(c) At the commencement of hospitalization under the provisions of paragraph (a) or paragraph (b) the department of correction shall enter in the patient record of such prisoner the date of the expiration of the sentence of the prisoner. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be applied to reduce such sentence, and on such date the prisoner shall be discharged; provided, however, that if the superintendent or other head of a facility or the medical director of the Bridgewater state hospital determines that the discharge of the prisoner committed subject to the provisions of paragraph (a) would create a likelihood of serious harm by reason of mental illness, he shall petition the district court having jurisdiction over the facility prior to the date of expiration to order the commitment of such person to a facility or to the Bridgewater state hospital under the provisions of this chapter other than paragraph (a); and provided, further, that any prisoner resident in a facility subject to the provisions of paragraph (b) shall be free to leave such facility subject to the provisions of section eleven.

(d) In the event the provisions of this chapter require the release of a prisoner from a facility or from the Bridgewater state hospital prior to the date of expiration of his sentence calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the place of detention from which he was transferred to such facility or to said hospital.

### **Chapter 123: Section 18A Facility residents; contribution towards cost of counsel**

Section 18A. A person who is a resident in a facility of the department of mental health or in the Bridgewater state hospital and who has funds held in trust for him by the department of mental health or the department of correction, shall contribute toward the cost of any counsel appointed pursuant to chapter two hundred and eleven D to provide representation in proceedings under this chapter, in an amount not exceeding five hundred dollars unless a larger contribution has been ordered by a court pursuant to sections two and five of chapter two hundred and eleven D. Whenever the department of correction or the department of mental health holds funds in trust for such a person, the department shall turn over such funds, but not exceeding five hundred dollars, to the treasurer to be credited toward the cost of providing such counsel.

### **Chapter 123: Section 19. Parties or witnesses; determination of mental condition.**

Section 19. In order to determine the mental condition of any party or witness before any court of the commonwealth, the presiding judge may, in his discretion, request the department to assign a qualified physician or psychologist, who, if assigned shall make such examinations as the judge may deem necessary.

### **Chapter 123: Section 20. Extradition of mental institution escapees.**

Section 20. (a) The governor may upon demand deliver to the executive of any other state any person who has escaped from an institution for the mentally ill to which he has been committed under the laws of such state, and who may be dangerous to the safety of the public, or may upon application appoint an agent to demand of the executive authority of any other state any person who has escaped from an institution in this commonwealth. Such demand or application shall be accompanied by an attested copy of the commitment and sworn evidence of the superintendent or manager of the institution stating that the person demanded has escaped from such institution, and by such further evidence as the governor requires.

(b) If the governor is satisfied that the demand made upon him under the preceding paragraph conforms to law and ought to be complied with, he shall issue his warrant under the seal of the commonwealth to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, and at a time designated in the warrant, to deliver custody of such person to such agent.

(c) A person arrested upon such a warrant shall not be delivered to the agent of another state until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of habeas corpus, if he claims such right of the officer making the arrest. If said writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney general or to the district attorney for the district where the arrest is made. An officer who delivers such person in his custody upon such warrant to such agent for rendition without having complied with this section shall forfeit not more than one thousand dollars. Pending the determination of the court upon an application for said writ, the person shall be detained in custody in a suitable facility.

### **Chapter 123: Section 21. Transportation of mentally ill persons; restraint.**

Section 21. Any person who transports a mentally ill person to or from a facility for any purpose authorized under this chapter shall not use any restraint which is unnecessary for the safety of the person being transported or other persons likely to come in contact with him.

In the case of persons being hospitalized under the provisions of section six, the applicant shall authorize practicable and safe means of transport, including where appropriate, departmental or police transport.

Restraint of a mentally ill patient may only be used in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide; provided, however, that written authorization for such restraint is given by the superintendent or director of the facility or by a physician designated by him for this purpose who is present at the time of the emergency or if the superintendent or director or designated physician is not present at the time of the emergency, non-chemical means of restraint may be used for a period of one hour provided that within one hour the person in restraint shall be examined by the superintendent, director or designated physician. Provided further, that if said examination has not occurred within one hour, the patient may be restrained for up to an additional one hour period until such examination is conducted, and the superintendent, director, or designated physician

shall attach to the restraint form a written report as to why the examination was not completed by the end of the first hour of restraint.

Any minor placed in restraint shall be examined within fifteen minutes of the order for restraint by a physician or, if a physician is not available, by a registered nurse or a certified physician assistant; provided, however, that said minor shall be examined by a physician within one hour of the order for restraint. A physician or, if a physician is not available, a registered nurse or a certified physician assistant, shall review the restraint order, by personal examination of the minor or consultation with ward staff attending the minor, every hour thereafter.

No minor shall be secluded for more than two hours in any twenty-four hour period; provided, however, that no such seclusion of a minor may occur except in a facility with authority to use such seclusion after said facility has been inspected and specially certified by the department. The department shall issue regulations establishing procedures by which a facility may be specially certified with authority to seclude a minor. Such regulations shall provide for review and approval or disapproval by the commissioner of a biannual application by the facility which shall include (i) a comprehensive statement of the facility's policies and procedures for the utilization and monitoring of restraint of minors including a statistical analysis of the facility's actual use of such restraint, and (ii) a certification by the facility of its ability and intent to comply with all applicable statutes and regulations regarding physical space, staff training, staff authorization, record keeping, monitoring and other requirements for the use of restraints.

Any use of restraint on a minor exceeding one hour in any twenty-four hour period shall be reviewed within two working days by the director of the facility. The director shall forward a copy of his report on each such instance of restraint to the human rights committee of that facility and, in the event that there is no human rights committee, to the appropriate body designated by the commissioner of mental health. The director shall also compile a record of every instance of restraint in the facility and shall forward a copy of said report on a monthly basis to the human rights committee or the body designated by the commissioner of mental health.

No order for restraint for an individual shall be valid for a period of more than three hours beyond which time it may be renewed upon personal examination by the superintendent, director, authorized physician or, for adults, by a registered nurse or a certified physician assistant; provided, however, that no adult shall be restrained for more than six hours beyond which time an order may be renewed only upon personal examination by a physician. The reasons for the original use of restraint, the reason for its continuation after each renewal, and the reason for its cessation shall be noted upon the restraining form by the superintendent, director or authorized physician or, when applicable, by the registered nurse or certified physician assistant at the time of each occurrence.

When a designated physician is not present at the time and site of the emergency, an order for chemical restraint may be issued by a designated physician who has determined, after telephone consultation with a physician, registered nurse or certified physician assistant who is present at the time and site of the emergency and who has personally examined the patient, that such chemical restraint is the least restrictive, most appropriate alternative available; provided, however, that the medication so ordered has been previously authorized as part of the individual's current treatment plan.

No person shall be kept in restraint without a person in attendance specially trained to understand, assist and afford therapy to the person in restraint. The person may be in attendance immediately outside the room in full view of the patient when an individual is being secluded without mechanical restraint; provided, however, that in emergency situations when a person specially trained is not available, an adult, may be kept in restraint unattended for a period not to exceed two hours. In that event, the person kept in

restraints must be observed at least every five minutes; provided, further, that the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the specially trained attendant was not available. The maintenance of any adult in restraint for more than eight hours in any twenty-four hour period must be authorized by the superintendent or facility director or the person specifically designated to act in the absence of the superintendent or facility director; provided, however, that when such restraint is authorized in the absence of the superintendent or facility director, such authorization must be reviewed by the superintendent or facility director upon his return.

No "P.R.N." or "as required" authorization of restraint may be written. No restraint is authorized except as specified in this section in any public or private facility for the care and treatment of mentally ill persons including Bridgewater.

No later than twenty-four hours after the period of restraint, a copy of the restraint form shall be delivered to the person who was in restraint. A place shall be provided on the form or on attachments thereto, for the person to comment on the circumstances leading to the use of restraint and on the manner of restraint used.

A copy of the restraint form and any such attachments shall become part of the chart of the patient. Copies of all restraint forms and attachments shall be sent to the commissioner of mental health, or with respect to Bridgewater state hospital to the commissioner of correction, who shall review and sign them within thirty days, and statistical records shall be kept thereof for each facility including Bridgewater state hospital, and each designated physician. Furthermore such reports, excluding patient identification, shall be made available to the general public at the department's central office, or with respect to Bridgewater state hospital at the department of correction's central office.

Responsibility and liability for the implementation of the provisions of this section shall rest with the department, the superintendent or director of each facility or the physician designated by such superintendent or director for this purpose.

### **Chapter 123: Section 22 Civil liability of physicians, qualified psychologists, qualified psychiatric nurse mental health clinic specialists, police officers and licensed independent clinical social workers**

Section 22. Physicians, qualified psychologists, qualified psychiatric nurse mental health clinical specialists, police officers and licensed independent clinical social workers shall be immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility or the Bridgewater state hospital if the physician, qualified psychologist, qualified psychiatric nurse mental health clinical specialist, police officer or licensed independent clinical social workers acts pursuant to this chapter.

### **Chapter 123: Section 23 Rights of persons receiving services from programs or facilities of department of mental health**

Section 23. This section sets forth the statutory rights of all persons regardless of age receiving services from any program or facility, or part thereof, operated by, licensed by or contracting with the department of mental health, including persons who are in state hospitals or community mental health centers or who are in residential programs or inpatient facilities operated by, licensed by or contracting with said department. Such persons may exercise the rights described in this section without harassment or reprisal,

including reprisal in the form of denial of appropriate, available treatment. The rights contained herein shall be in addition to and not in derogation of any other statutory or constitutional rights accorded such persons.

Any such person shall have the following rights:

(a) reasonable access to a telephone to make and receive confidential telephone calls and to assistance when desired and necessary to implement such right; provided, that such calls do not constitute a criminal act or represent an unreasonable infringement of another person's right to make and receive telephone calls;

(b) to send and receive sealed, unopened, uncensored mail; provided, however, that the superintendent or director or designee of an inpatient facility may direct, for good cause and with documentation of specific facts in such person's record, that a particular person's mail be opened and inspected in front of such person, without it being read by staff, for the sole purpose of preventing the transmission of contraband. Writing materials and postage stamps in reasonable quantities shall be made available for use by such person. Reasonable assistance shall be provided to such person in writing, addressing and posting letters and other documents upon request;

(c) to receive visitors of such person's own choosing daily and in private, at reasonable times. Hours during which visitors may be received may be limited only to protect the privacy of other persons and to avoid serious disruptions in the normal functioning of the facility or program and shall be sufficiently flexible as to accommodate individual needs and desires of such person and the visitors of such person.

(d) to a humane psychological and physical environment. Each such person shall be provided living quarters and accommodations which afford privacy and security in resting, sleeping, dressing, bathing and personal hygiene, reading and writing and in toileting. Nothing in this section shall be construed to require individual sleeping quarters.

(e) to receive at any reasonable time as defined in department regulations, or refuse to receive, visits and telephone calls from a client's attorney or legal advocate, physician, psychologist, clergy member or social worker, even if not during normal visiting hours and regardless of whether such person initiated or requested the visit or telephone call. An attorney or legal advocate working under an attorney's supervision and who represents a client shall have access to the client and, with such client's consent, the client's record, the hospital staff responsible for the client's care and treatment and any meetings concerning treatment planning or discharge planning where the client would be or has the right to be present. Any program or facility, or part thereof, operated by, licensed by or contracting with the department shall ensure reasonable access by attorneys and legal advocates of the Massachusetts Mental Health Protection and Advocacy Project, the Mental Health Legal Advisors Committee, the committee for public counsel services and any other legal service agencies funded by the Massachusetts Legal Assistance Corporation under the provisions of chapter 221A, to provide free legal services. Upon admission, and upon request at any time thereafter, persons shall be provided with the name, address and telephone number of such organizations and shall be provided with reasonable assistance in contacting and receiving visits or telephone calls from attorneys or legal advocates from such organizations; provided, however, that the facility shall designate reasonable times for unsolicited visits and for the dissemination of educational materials to persons by such attorneys or legal advocates. The department shall promulgate rules and regulations further defining such access. Nothing in this paragraph shall be construed to limit the ability of attorneys or legal advocates to access clients records or staff as provided by any other state or federal law.

Any dispute or disagreement concerning the exercise of the aforementioned rights in clauses (a) to (e), inclusive, and the reasons therefor shall be documented with specific facts in the client's record and subject to timely appeal.

Any right set forth in clauses (a) and (c) may be temporarily suspended, but only for a person in an inpatient facility and only by the superintendent, director, acting superintendent or acting director of such facility upon such person; concluding, pursuant to standards and procedures set forth in department regulations that, based on experience of such person's exercise of such right, further such exercise of it in the immediate future would present a substantial risk of serious harm to such person or others and that less restrictive alternatives have either been tried and failed or would be futile to attempt. The suspension shall last no longer than the time necessary to prevent the harm and its imposition shall be documented with specific facts in such person's record.

A notice of the rights provided in this section shall be posted in appropriate and conspicuous places in the program or facility and shall be available to any such person upon request. The notice shall be in language understandable by such persons and translated for any such person who cannot read or understand English.

The department, after notice and public hearing pursuant to section 2 of chapter 30A, shall promulgate regulations to implement the provisions of this section.

In addition to the rights specified above and any other rights guaranteed by law, a mentally ill person in the care of the department shall have the following legal and civil rights: to wear his own clothes, to keep and use his own personal possessions including toilet articles, to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, to have access to individual storage space for his private use, to refuse shock treatment, to refuse lobotomy, and any other rights specified in the regulations of the department; provided, however, that any of these rights may be denied for good cause by the superintendent or his designee and a statement of the reasons for any such denial entered in the treatment record of such person.

### **Chapter 123: Section 23A Competent interpreter services in hospitals which provide acute psychiatric services**

Section 23A. (a) For purposes of this section the following words shall have the following meanings:

"Non-English speaker", a person who cannot speak or understand, or has difficulty with speaking or understanding, the English language because the speaker primarily or only uses a spoken language other than English.

"Competent interpreter services", interpreter services performed by a person who is fluent in English and in the language of a non-English speaker, who is trained and proficient in the skill and ethics of interpreting and who is knowledgeable about the specialized terms and concepts that need to be interpreted for purposes of receiving emergency care or treatment.

(b) Every hospital or separate unit of a hospital which provides acute psychiatric services, as defined in section 25B of chapter 111, shall in connection with the delivery of such services, and if an appropriate bilingual clinician is not available, provide competent interpreter services to every non-English speaker who is a patient. Based on the volume and diversity of the non-English-speaking patients or persons seeking appropriate emergency care or treatment, each such hospital shall use reasonable judgment as to whether to employ, or to contract for the on-call use of one or more interpreters for particular languages

when needed, or to use competent telephonic or televiewing interpreter services. However, such hospital shall only use competent telephonic or televiewing interpreter services in situations where there is either (1) no reasonable way to anticipate the need for employed or contracted interpreters for a particular language; or (2) there occurs, in a particular instance, an inability to provide competent interpreter services by an employed or contracted interpreter.

(c) The receipt by any non-English speaker of interpreter services shall not be deemed the receipt of a "public benefit" under any provision of law restricting benefits or assistance on the basis of immigrant status.

(d) Substantial compliance with the provisions of this section shall be a requirement of licensing or relicensing by the department under section 19 of chapter 19, and the department may promulgate regulations pursuant to section 18 of said chapter 19 for the implementation of this section.

(e) Any non-English speaker, who is denied appropriate acute psychiatric services by a hospital or separate unit of a hospital which provides acute psychiatric services by reason of the hospital's not having exercised reasonable judgment in making competent interpreter services available, as required by this section, or the attorney general upon receiving written notice from a regulating state agency that such hospital is substantially failing to comply with applicable interpreter requirements, shall have a right of action in the superior court against such hospital for declaratory or injunctive relief. A non-English speaker bringing such action shall not be required to exhaust any administrative remedies that may be available to him and may be awarded damages for any actual harm suffered, but at least \$250 in damages shall be awarded for each violation, together with such costs, including expert fees and attorney's fees, as may be reasonably incurred in such action. Such action shall be brought within three years of any such failure to provide competent interpreter services.

### **Chapter 123: Section 24. Legal capacity of persons admitted or committed.**

Section 24. No person shall be deemed to be incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operators licenses or to make a will solely by reason of his admission or commitment in any capacity to the treatment or care of the department or to any public or private facility, nor shall departmental regulations restrict such rights.

### **Chapter 123: Section 25. Guardian or conservator; appointment.**

Section 25. In addition to the periodic review under section four of this chapter, whenever the superintendent has reason to believe that a person who has been under the care of the department as an inpatient or resident for more than six months, who is not under guardianship or conservatorship, is unable to care for his property, he shall promptly notify said person's nearest living relative and recommend that the necessary steps be taken for the appointment of a guardian or a conservator.

### **Chapter 123: Section 26. Deposit of funds held in trust for inpatients or residents; unclaimed funds and personal property; fiduciaries.**

Section 26. (a) The superintendent may deposit in any bank organized and existing under the laws of the commonwealth funds belonging to persons who are inpatients or residents at such facility, funds deposited by relatives or friends of such persons, and other funds belonging to such persons except that independent funds shall only be deposited with the consent of the resident. The interest earned by any funds so deposited shall be credited to the account of such person. Such funds shall be held in trust or

used for the benefit of such persons except that such person shall have an unrestricted right to manage and spend in his sole discretion all his independent funds.

(b) Any funds held in trust by the superintendent for any persons who have been discharged from or who have otherwise left any facility of the department, or the custody of the department, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent to the state treasurer to be held subject to being paid to the person establishing a lawful right thereto, with interest at the rate of five per cent per annum from the time when it was so paid to the state treasurer to the time when it is paid by him to such person; provided, however, that the department shall first be paid from such funds for any sum due it for charges to the person for whom such funds were originally deposited, and provided, further, that if such amount does not exceed fifty dollars, the superintendent may pay such sum to the state treasurer immediately. The balance of such funds, after six years from the date when such funds were paid to the state treasurer, may be used as part of the ordinary revenue of the commonwealth. Any person may, however, establish his claim to such funds after the expiration of such six year period and any claim so established shall be paid from the ordinary revenue of the commonwealth. Any person claiming a right to funds deposited with the state treasurer under this section may establish the same by a petition to the probate court; provided, however, that in cases where claims amount to less than fifty dollars, the claims may be presented to the comptroller who shall examine the same and allow and certify for payment such as may be proved to his satisfaction.

(c) Personal property belonging to or deposited for the benefit of any persons who have been discharged from or who have otherwise left any facility or the custody of the department, which shall have remained unclaimed for more than one year shall be sold, or if without value, otherwise disposed of by the superintendent; provided, however, that no less than thirty days prior to such disposition the superintendent shall send notice of the intended sale or disposition of such property to the person at his last known residential address, to the nearest relative or guardian or conservator of such person or the person with whom such person last resided. If such person, relative or other person does not within such thirty day period object to such sale or disposition, the department may sell or dispose of the property in accordance with its regulations. Funds received as a result of such sale or disposition shall be disposed of in accordance with the provisions of subsection (b) of this section.

(d) All fiduciaries of persons who are inpatients or residents at a departmental facility shall register with the superintendent of such facility on a form supplied by the department.

(e) The department shall establish procedures to make the fiduciaries accountable to the department for all funds belonging to such inpatients and residents. These procedures shall require an annual report by the fiduciary to the department on a form supplied by the department indicating the manner in which such funds were managed or expended during the report period. The annual report shall be submitted by the fiduciary under penalty of perjury pursuant to sections one and one A of chapter two hundred and sixty-eight.

(f) A fiduciary who fails to register with the department or who fails to submit an annual report to the department shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars.

(g) A fiduciary who embezzles or fraudulently converts or appropriates money, goods, or property held or possessed by him for the use and benefit of the resident shall be subject to penalties prescribed in section fifty-seven of chapter two hundred and sixty-six.



(h) A guardian, trustee, or conservator shall be removed from his duties upon his conviction of any of the offenses enumerated in paragraphs (f) and (g). The department shall petition the appropriate federal agency for the removal of a representative payee from his duties upon his conviction of any of the offenses enumerated in said paragraphs (f) and (g).

**Chapter 123: Section 27. Administration of estate of deceased inpatient or resident.**

Section 27. If an inpatient or resident of any facility dies leaving an estate which does not exceed five thousand dollars in value, the superintendent shall notify the nearest living relative of such inpatient or resident of such fact, and if, after the expiration of thirty days from the date of such notice, no petition for administration of said estate has been filed, the department may provide for the administration of said estate under the provisions of section sixteen of chapter one hundred and ninety-five.

**Chapter 123: Section 28. Violent or unnatural death of patients; notice to district attorney.**

Section 28. Upon the death of any person confined to a mental institution under the control of the department, the superintendent of such institution shall, if he is of the opinion that the death may have resulted from violence or unnatural causes, immediately notify the district attorney for the district in which the death occurred, giving him the name and address of the person who died and the cause of death.

**Chapter 123: Section 29. Instruction and education; work programs; sale of work products.**

Section 29. (a) In cooperation with other state departments and agencies the department shall cause to be given to persons under its care instruction and education as may be appropriate for such persons to undertake, especially persons who are unable to engage in programs for patient-trainees.

(b) In cooperation with other state departments and agencies, the department shall cause to be established at each facility programs for persons under its care who would be assisted by performing work in or about such facility. The department shall pay or credit such trainee for work performed by him under said program in accordance with payment schedules established by the department in its regulations and approved by the commissioner of administration.

(c) The department may permit the sale of the work products of any person under its care on such conditions as it shall determine. The department shall also determine the price for which said goods may be sold, and the portion, if any, of the proceeds of each sale which shall be returned to the commonwealth to reimburse it for its costs in connection therewith. The balance of the proceeds of any such sale shall be held in trust in accordance with the provisions of paragraph (a) of section twenty-six.

**Chapter 123: Section 30. Unauthorized absence of patients; notification of police, et al.; return.**

Section 30. If a patient or resident in a facility of the department is absent without authorization the superintendent of the facility shall notify the state and local police, the district attorney of the county wherein the facility is located and the next of kin of such patient or resident. Any patient or resident in a facility of the department who is absent for less than six months without authorization consistent with the provisions of this chapter, the regulations of the department, or the rules of said facility may be returned by a police officer or other person designated by the superintendent or the director. Said six month

limitation shall not apply to persons who have been found not guilty of a criminal charge by reason of insanity nor to persons who have been found incompetent to stand trial on a criminal charge.

**Chapter 123: Section 31. Medicine and drugs; indigent patients.**

Section 31. Medicine and drugs shall be furnished free of charge to any patient at the outpatient clinic of a facility of the department who, in the opinion of the head of the facility or his representatives, is indigent and requires them. For the purpose of this section, the determination as to whether the patient is indigent shall be final; provided, however, that all medicines and drugs furnished a patient who meets the eligibility requirements for medical assistance under chapter one hundred and eighteen E shall be provided in accordance with the provisions of that chapter.

**Chapter 123: Section 32. Charges for care of persons in facilities.**

Section 32. The department may make charges for the care of any person in its facilities. To the extent that any person in its facilities is eligible for third party payment of charges for care, the department shall make said charges for care at rates established by the rate setting commission under chapter six A. To the extent that third party payment is not available, or is not sufficient to pay said charges, the charges may be recovered from said person, or from any person with a legal obligation to support the person; provided, however, that said person shall be entitled to retain one thousand dollars in cash or personal property; and provided, further, that the department shall make adjustments to the charges based upon said person's individual circumstances. The department also shall establish, by regulation, a system of charges for care in programs funded by or under a contract with the department which is consistent with the provisions of this section.

**Chapter 123: Section 33. Expenses of apprehension, examination, hearing, commitment or delivery; certification; audit; payment; fees.**

Section 33. All necessary expenses attending the apprehension, examination, hearing, commitment or delivery of a mentally ill person, or an alleged alcoholic shall be allowed and certified by the judge if said person is committed pursuant to this chapter, and presented as often as once a year to the comptroller, who shall examine and audit the same. Necessary expenses attending the apprehension, examination or hearing of any person sought to be committed pursuant to this chapter but not so committed shall be so presented, examined and audited if they have been allowed in the discretion of the judge and certified by him. All expenses certified, examined and audited as provided in this section shall be paid by the commonwealth. If application is made for the commitment of a person whose expenses and support are not to be paid by the commonwealth, said expenses shall be paid by the applicant or by a person in his behalf. The compensation of the physicians and officers taking part in the commitment or admission of persons to facilities in accordance with this chapter shall be as follows: The fee for each physician making an authorized mental examination and for making a written report thereon to the court, or for making a medical certificate, shall be twenty-five dollars, and twenty cents for each mile traveled one way or such other rates as may be set by the rate setting commission under chapter six A. Any physician required to appear before a judge or justice in any commitment proceedings, in which such physician has made an examination, shall receive a fee of twenty-five dollars, and twenty cents for each mile traveled one way for such appearance before the court, or such other rate as may be set by the rate setting commission under chapter six A. The fees for officers servicing process shall be the same as are allowed by law in like cases.

**Chapter 123: Section 34. Commitment or transfer to veterans administration or other federal agency.**

Section 34. (a) The judgment or order of commitment by a court of competent jurisdiction of another state or of the district of Columbia, committing a person to the Veterans Administration or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this commonwealth as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint. The law of the committing state or district shall govern with respect to the authority of the chief officer of any facility of said Veterans Administration or of any institution operated in this commonwealth by any other agency of the United States to retain custody of, or transfer, trial visit, or discharge, the committed person.

(b) Whenever, in any proceeding under the laws of this commonwealth for the commitment of a person alleged to be of unsound mind or otherwise in need of care and treatment in a facility or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a facility for the mentally ill or other institution is necessary for care and treatment and it appears that such person is eligible for care or treatment by said Veterans Administration or other agency of the United States government, the court, upon receipt of certificate from said Veterans Administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said Veterans Administration or other agency. The person whose commitment is sought shall be personally served with such notice of the pending commitment proceedings as is required, and in such manner as is provided, by the laws of the commonwealth; and nothing in this section shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this commonwealth shall be subject to the rules and regulations of said Veterans Administration or other agency. The chief officer of any facility of said Veterans Administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as the department with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of the commonwealth at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this section are so conditioned.

(c) Upon receipt of a certificate of said Veterans Administration or such other agency of the United States that facilities are available for the care or treatment of any person committed to any facility for the mentally ill or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the department or the committing court may cause the transfer of such person to said Veterans Administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to said Veterans Administration or other agency of the United States if he is confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the grounds of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing. Any person transferred as provided in this subsection shall be deemed to be committed to said Veterans Administration or other agency of the United States pursuant to the original commitment.

**Chapter 123: Section 35. Commitment of alcoholics or substance abusers.**

Section 35. For the purposes of this section, "alcoholic" shall mean a person who chronically or habitually consumes alcoholic beverages to the extent that (1) such use substantially injures his health or substantially interferes with his social or economic functioning, or (2) he has lost the power of self-control over the use of such beverages.

For the purposes of this section, "substance abuser" shall mean a person who chronically or habitually consumes or ingests controlled substances or who intentionally inhales toxic vapors to the extent that: (i) such use substantially injures his health or substantially interferes with his social or economic functioning; or (ii) he has lost the power of self-control over the use of such controlled substances or toxic vapors.

Any police officer, physician, spouse, blood relative, guardian or court official may petition in writing any district court or any division of the juvenile court department for an order of commitment of a person whom he has reason to believe is an alcoholic or substance abuser. Upon receipt of a petition for an order of commitment of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the application to be served upon the person in the manner provided by section twenty-five of chapter two hundred and seventy-six. In the event of the person's failure to appear at the time summoned, the court may issue a warrant for the person's arrest. Upon presentation of such a petition, if there are reasonable grounds to believe that such person will not appear and that any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent, said court may issue a warrant for the apprehension and appearance of such person before it. No arrest shall be made on such warrant unless the person may be presented immediately before a judge of the district court. The person shall have the right to be represented by legal counsel and may present independent expert or other testimony. If the court finds the person indigent, it shall immediately appoint counsel. The court shall order examination by a qualified physician or a qualified psychologist.

If, after a hearing, the court based upon competent medical testimony finds that said person is an alcoholic or substance abuser and there is a likelihood of serious harm as a result of his alcoholism or substance abuse, it may order such person to be committed for a period not to exceed thirty days. Such commitment shall be for the purpose of inpatient care in public or private facilities approved by the department of public health under the provisions of chapter one hundred and eleven B for the care and treatment of alcoholism or substance abuse. The person may be committed to the Massachusetts correctional institution at Bridgewater, if a male, or at Framingham, if a female, provided that there are not suitable facilities available under chapter one hundred and eleven B; and provided, further, that the person so committed shall be housed and treated separately from convicted criminals. A person so committed may be released prior to the expiration of the period of commitment upon determination by the superintendent that release of said person will not result in a likelihood of serious harm. Said person shall be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purposes. The department of mental health, in conjunction with the department of public health, shall maintain a roster of public and private facilities available, together with the number of beds currently available, for the care and treatment of alcoholism or substance abuse and shall make it available to the district courts of the commonwealth on a monthly basis.

Nothing in this section shall preclude any public or private facility for the care and treatment of alcoholism or substance abuse, including the separated facilities at the Massachusetts correctional institutions at Bridgewater and Framingham, from treating persons on a voluntary basis.

### **Chapter 123: Section 36. Patient records; inspection; maintenance and retention**

Section 36. The department shall keep records of the admission, treatment and periodic review of all persons admitted to facilities under its supervision. Such records shall be private and not open to public inspection except (1) upon proper judicial order whether or not in connection with pending judicial proceedings, (2) that the commissioner shall allow the attorney of a patient or resident to inspect records of said patient or resident if requested to do so by the patient, resident or attorney, (3) that the commissioner may permit inspection or disclosure when in the best interest of the patient or resident as provided in the rules and regulations of the department and (4) as required by section one hundred and seventy-eight C to one hundred and seventy-eight O, inclusive, of chapter six. This section shall govern the patient records of the department notwithstanding any other provision of law. Each facility, subject to this chapter and section 19 of chapter 19, that provides mental health care and treatment shall maintain patient records, as defined in the first paragraph of section 70 of chapter 111, for at least 20 years after the closing of the record due to discharge, death or last date of service. A facility shall not destroy such records until after the retention period has elapsed and only upon notifying the department of public health that the records will be destroyed, provided that the department shall promulgate regulations further defining an appropriate notification process. On the notice of privacy practices distributed to its patients, each facility shall provide: (i) information concerning the provisions of this section; and (ii) the hospital or clinic's records termination policy.

### **Chapter 123: Section 36A. Court records of examination or commitment; privacy.**

Section 36A. All reports of examinations made to a court pursuant to sections one to eighteen, inclusive, section forty-seven and forty-eight shall be private except in the discretion of the court. All petitions for commitment, notices, orders of commitment and other commitment papers used in proceedings under sections one to eighteen and section thirty-five shall be private except in the discretion of the court. Each court shall keep a private docket of the cases of persons coming before it believed to be mentally ill, including proceedings under section thirty-five; provided that nothing in this section shall prevent public inspection of any complaints or indictments in a criminal case, or prevent any notation in the ordinary docket of criminal cases concerning commitment proceedings under sections one to eighteen against a defendant in a criminal case. Notwithstanding the provisions of this paragraph, any person who is the subject of an examination or a commitment proceeding, or his counsel, may inspect all reports and papers filed with the court in a pending proceeding, and the prosecutor in a criminal case may inspect all reports and papers concerning commitment proceedings that are filed with the court in a pending case.

### **Chapter 123: Section 36B Duty to warn patient's potential victims; cause of action**

Section 36B. (1) There shall be no duty owed by a licensed mental health professional to take reasonable precautions to warn or in any other way protect a potential victim or victims of said professional's patient, and no cause of action imposed against a licensed mental health professional for failure to warn or in any other way protect a potential victim or victims of such professional's patient unless: (a) the patient has communicated to the licensed mental health professional an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim or victims and the patient has the apparent intent and ability to carry out the threat, and the licensed mental health professional fails to take reasonable precautions as that term is defined in section one; or (b) the patient has a history of physical violence which is known to the licensed mental health professional and the licensed mental health professional has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury against a reasonably identified victim or victims and the licensed mental health professional fails to take reasonable precautions as that term is defined by said section one. Nothing in this paragraph shall be construed to require a mental health professional to take any action which, in the exercise of reasonable

professional judgment, would endanger such mental health professional or increase the danger to potential victim or victims.

(2) Whenever a licensed mental health professional takes reasonable precautions, as that term is defined in section one of chapter one hundred and twenty-three, no cause of action by the patient shall lie against the licensed mental health professional for disclosure of otherwise confidential communications.

## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 123A. CARE, TREATMENT AND REHABILITATION OF SEXUALLY DANGEROUS PERSONS.**

Chapter 123A, Section 1. Definitions.

Chapter 123A, Section 2. Nemasnet Correctional Center; treatment and rehabilitation personnel.

Chapter 123A, Section 2A. Transfer to a correctional institution; provision of voluntary treatment services.

Chapter 123A, Section 3--6. Repealed, 1990, 150, Sec. 304.

Chapter 123A, Section 6A. Most appropriate level of security; participation in community access program; notice required.

Chapter 123A, Section 7. Repealed, 1990, 150, Sec. 304.

Chapter 123A, Section 8. Repealed, 1993, 489, Sec. 5.

Chapter 123A, Section 9. Petitions for examination and discharge.

Chapter 123A, Section 9A, 9B. Repealed, 1993, 489, Sec. 5.

Chapter 123A, Section 10, 11. Repealed, 1993, 489, Sec. 6.

Chapter 123A, Section 12. Notification of persons adjudicated as delinquent juvenile or youthful offender by reason of a sexual offense; petitions for classification as sexually dangerous person; hearings

Chapter 123A, Section 13. Temporary commitment of prisoner or youth to treatment center; right to counsel; psychological examination

#### **Chapter 123A: Section 1. Definitions**

Section 1. As used in this chapter the following words shall, except as otherwise provided, have the following meanings:—

“Agency with jurisdiction”, the agency with the authority to direct the release of a person presently incarcerated, confined or committed to the department of youth services, regardless of the reason for such incarceration, confinement or commitment, including, but not limited to a sheriff, keeper, master or superintendent of a jail, house of correction or prison, the director of a custodial facility in the department of youth services, the parole board and, where a person has been found incompetent to stand trial, a district attorney.

“Community access board”, a board consisting of five members appointed by the commissioner of correction, whose function shall be to consider a person’s placement within a community access program and conduct an annual review of a person’s sexual dangerousness.

“Community Access Program”, a program established pursuant to section six A that provides for a person’s reintegration into the community.

“Conviction”, a conviction of or adjudication as a delinquent juvenile or a youthful offender by reason of sexual offense, regardless of the date of offense or date of conviction or adjudication.

“Mental abnormality”, a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

“Personality disorder”, a congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.

“Qualified examiner”, a physician who is licensed pursuant to section two of chapter one hundred and twelve who is either certified in psychiatry by the American Board of Psychiatry and Neurology or eligible to be so certified, or a psychologist who is licensed pursuant to sections one hundred and eighteen

to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve; provided, however, that the examiner has had two years of experience with diagnosis or treatment of sexually aggressive offenders and is designated by the commissioner of correction. A "qualified examiner" need not be an employee of the department of correction or of any facility or institution of the department.

"Sexual offense", includes any of the following crimes: indecent assault and battery on a child under fourteen under the provisions of section thirteen B of chapter two hundred and sixty-five; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of chapter 265; a repeat offense under section 13B3/4 of chapter 265; indecent assault and battery on a mentally retarded person under the provisions of section thirteen F of chapter two hundred and sixty-five; indecent assault and battery on a person who has obtained the age of fourteen under the provisions of section thirteen H of chapter two hundred and sixty-five; rape under the provisions of section twenty-two of chapter two hundred and sixty-five; rape of a child under sixteen with force under the provisions of section twenty-two A of chapter two hundred and sixty-five; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under sixteen under the provisions of section twenty-three of chapter two hundred and sixty-five; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under the provisions of section twenty-four of chapter two hundred and sixty-five; assault on a child with intent to commit rape under section 24B of chapter 265; kidnapping under section 26 of said chapter 265 with intent to commit a violation of section 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of said chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a person under 18 into prostitution under section 4A of said chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; open and gross lewdness and lascivious behavior under section 16 of said chapter 272; incestuous intercourse under section 17 of said chapter 272 involving a person under the age of 21; dissemination or possession with the intent to disseminate to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; purchase or possession of visual material of a child depicted in sexual conduct under section 29C of said chapter 272; dissemination of visual material of a child in the state of nudity or in sexual conduct under section 30D of chapter 272; unnatural and lascivious acts with a child under the age of sixteen under the provisions of section thirty-five A of chapter two hundred and seventy-two; accosting or annoying persons of the opposite sex and lewd, wanton and lascivious speech or behavior under section 53 of said chapter 272; and any attempt to commit any of the above listed crimes under the provisions of section six of chapter two hundred and seventy-four or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority; and any other offense, the facts of which, under the totality of the circumstances, manifest a sexual motivation or pattern of conduct or series of acts of sexually-motivated offenses.

"Sexually dangerous person", any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.



“Sexually dangerous person”, any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

### **Chapter 123A: Section 2 Nemasket Correctional Center; treatment and rehabilitation personnel**

Section 2. The commissioner of correction shall maintain subject to the jurisdiction of the department of correction a treatment program or branch thereof at a correctional institution for the care, custody, treatment and rehabilitation of persons adjudicated as being sexually dangerous. Said facility shall be known as the "Nemasket Correctional Center". The commissioner of correction shall appoint a chief administrative officer who shall have responsibility for providing personnel with respect to the treatment and rehabilitation of the sexually dangerous persons, consistent with public safety. The commissioner of correction shall have the authority to promulgate regulations consistent with the provisions of this chapter.

### **Chapter 123A: Section 2A Transfer to a correctional institution; provision of voluntary treatment services**

Section 2A. An individual committed as sexually dangerous and who has also been sentenced for a criminal offense and said sentence has not expired may be transferred from the treatment center to another correctional institution designated by the commissioner of correction. In determining whether a transfer to a correctional institution is appropriate the commissioner of correction may consider the following factors:

- (1) the person's unamenability to treatment;
- (2) the person's unwillingness or failure to follow treatment recommendations;
- (3) the person's lack of progress in treatment at the center or branch thereof;
- (4) the danger posed by the person to other residents or staff at the Treatment Center or branch thereof;
- (5) the degree of security necessary to protect the public.

The department of correction shall promulgate regulations establishing a transfer board and procedures governing transfer, including notification of hearing, opportunity to be heard, written decision notification of decision, opportunity for appeal, and periodic review of placement.

The commissioner of correction shall make available to the remanded individuals a program of voluntary treatment services. An annual review shall be conducted of the current sexual dangerousness of each transferred individual and a report prepared which shall be admissible in a hearing under section nine of this chapter. Upon completion of said person's criminal sentence, he shall be returned to the

treatment center and considered for participation in the community access program. Existing civil commitments to the treatment center shall not be vacated by the transfer to a correctional institution.

**Chapter 123A: Section 3--6. Repealed, 1990, 150, Sec. 304.**

**Chapter 123A: Section 6A Most appropriate level of security; participation in community access program; notice required**

Section 6A. Any person committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be held in the most appropriate level of security required to ensure protection of the public, correctional staff, himself and others. Any juvenile who is committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be segregated from any adults held at such facility.

Only a person whose criminal sentence has expired or upon whom a criminal sentence was never imposed shall be entitled to apply for participation in a community access program once in every twelve months. Said program shall be administered pursuant to the rules and regulations promulgated by the department of correction. As part of its program of community access the department of correction shall establish a board known as the community access board which board shall consist of five members appointed by the commissioner of correction, consistent with the rules and regulations of the department. Membership shall include three department of correction employees and two persons who are not department of correction employees, but who may be independent contractors or consultants. The non-employee members shall consist of psychiatrists or psychologists licensed by the commonwealth. The board shall evaluate residents for participation in the community access program and establish conditions to ensure the safety of the general community. The board shall have access to all records of the person being evaluated and shall give a report of its findings including dissenting views, to the chief administrative officer of the center. Such report shall be admissible in any hearing under section nine of this chapter. The board shall also conduct annual reviews of and prepare reports on the current sexual dangerousness of all persons at the treatment center, including those whose criminal sentences have not expired. The reports shall be admissible in a hearing under section nine of this chapter.

Any person participating in a community access program under this section shall continue to reside within the secure confines of MCI-Bridgewater and be under daily evaluation by treatment center personnel to determine if he presents a danger to the community. Upon approval of a person for participation in a community access program, notice shall be given to the colonel of state police, to the attorney general, to the district attorney in the district from which the person's criminal commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of Bridgewater, the police department where such person's participation in the community access program will occur the employer of persons participating in the access program, and any victim of the sexual offense from which the commitment originated. If such victim is deceased at the time of such program participation, notice of the person's participation in a community access program shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

**Chapter 123A: Section 7. Repealed, 1990, 150, Sec. 304.**

**Chapter 123A: Section 8. Repealed, 1993, 489, Sec. 5.**

**Chapter 123A: Section 9. Petitions for examination and discharge.**

Section 9. Any person committed to the treatment center shall be entitled to file a petition for examination and discharge once in every twelve months. Such petition may be filed by either the committed person,

his parents, spouse, issue, next of kin or any friend. The department of correction may file a petition at any time if it believes a person is no longer a sexually dangerous person. A copy of any petition filed under this subsection shall be sent within fourteen days after the filing thereof to the department of the attorney general and to the district attorney for the district where the original proceedings were commenced. Said petition shall be filed in the district of the superior court department in which said person was committed. The petitioner shall have a right to a speedy hearing on a date set by the administrative justice of the superior court department. Upon the motion of the person or upon its own motion, the court shall appoint counsel for the person. The hearing may be held in any court or any place designated for such purpose by the administrative justice of the superior court department. In any hearing held pursuant to the provisions of this section, either the petitioner or the commonwealth may demand that the issue be tried by a jury. If a jury trial is demanded, the matter shall proceed according to the practice of trial in civil cases in the superior court.

The court shall issue whatever process is necessary to assure the presence in court of the committed person. The court shall order the petitioner to be examined by two qualified examiners, who shall conduct examinations, including personal interviews, of the person on whose behalf such petition is filed and file with the court written reports of their examinations and diagnoses, and their recommendations for the disposition of such person. Said reports shall be admissible in a hearing pursuant to this section. If such person refuses, without good cause, to be personally interviewed by a qualified examiner appointed pursuant to this section, such person shall be deemed to have waived his right to a hearing on the petition and the petition shall be dismissed upon motion filed by the commonwealth. The qualified examiners shall have access to all records of the person being examined. Evidence of the person's juvenile and adult court and probation records, psychiatric and psychological records, the department of correction's updated annual progress report of the petition, including all relevant materials prepared in connection with the section six A process, and any other evidence that tends to indicate that he is a sexually dangerous person shall be admissible in a hearing under this section. The chief administrative officer of the treatment center or his designee may testify at the hearing regarding the annual report and his recommendations for the disposition of the petition. Unless the trier of fact finds that such person remains a sexually dangerous person, it shall order such person to be discharged from the treatment center. Upon such discharge, notice shall be given to the chief administrative officer, to the commissioner of correction and the colonel of state police, to the attorney general, to the district attorney in the district from which the commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of Bridgewater, the police department where such person is anticipated to take up residency, any employer of the resident, the department of criminal justice information services, and any victim of the sexual offense from which the commitment originated; provided, however, that said victim has requested notification pursuant to section three of chapter two hundred and fifty-eight B. If such victim is deceased at the time of such discharge, notice of such discharge shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

**Chapter 123A: Section 9A, 9B. Repealed, 1993, 489, Sec. 5.**

**Chapter 123A: Section 10, 11. Repealed, 1993, 489, Sec. 6.**

**Chapter 123A: Section 12. Notification of persons adjudicated as delinquent juvenile or youthful offender by reason of a sexual offense; petitions for classification as sexually dangerous person; hearings**

Section 12. (a) Any agency with jurisdiction of a person who has ever been convicted of or adjudicated as a delinquent juvenile or a youthful offender by reason of a sexual offense as defined in section 1, regardless of the reason for the current incarceration, confinement or commitment, or who has been charged with such offense but has been found incompetent to stand trial, or who has been charged with any offense, is currently incompetent to stand trial and has previously been convicted of or adjudicated as

a delinquent juvenile or a youthful offender by reason of a sexual offense, shall notify in writing the district attorney of the county where the offense occurred and the attorney general six months prior to the release of such person, except that in the case of a person who is returned to prison for no more than six months as a result of a revocation of parole or who is committed for no more than six months, such notice shall be given as soon as practicable following such person's admission to prison. In such notice, the agency with jurisdiction shall also identify those prisoners or youths who have a particularly high likelihood of meeting the criteria for a sexually dangerous person.

(b) When the district attorney or the attorney general determines that the prisoner or youth in the custody of the department of youth services is likely to be a sexually dangerous person as defined in section 1, the district attorney or the attorney general at the request of the district attorney may file a petition alleging that the prisoner or youth is a sexually dangerous person and stating sufficient facts to support such allegation in the superior court where the prisoner or youth is committed or in the superior court of the county where the sexual offense occurred.

(c) Upon the filing of a petition under this section, the court in which the petition was filed shall determine whether probable cause exists to believe that the person named in the petition is a sexually dangerous person. Such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause.

(d) At the probable cause hearing, the person named in the petition shall have the following rights:

- (1) to be represented by counsel;
- (2) to present evidence on such person's behalf;
- (3) to cross-examine witnesses who testify against such person; and
- (4) to view and copy all petitions and reports in the court file.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the court's probable cause determination, the court, upon a sufficient showing based on the evidence before the court at that time, may temporarily commit such person to the treatment center pending disposition of the petition. The person named in the petition may move the court for relief from such temporary commitment at any time prior to the probable cause determination.

### **Chapter 123A: Section 13. Temporary commitment of prisoner or youth to treatment center; right to counsel; psychological examination**

Section 13. (a) If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, no later than 15 days prior to the expiration of said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

(b) The court shall supply to the qualified examiners copies of any juvenile and adult court records which shall contain, if available, a history of previous juvenile and adult offenses, previous psychiatric and psychological examinations and such other information as may be pertinent or helpful to the examiners in making the diagnosis and recommendation. The district attorney or the attorney general shall provide a narrative or police reports for each sexual offense conviction or adjudication as well as any psychiatric, psychological, medical or social worker records of the person named in the petition in the district

attorney's or the attorney general's possession. The agency with jurisdiction over the person named in the petition shall provide such examiners with copies of any incident reports arising out of the person's incarceration or custody.

(c) The person named in the petition shall be entitled to counsel and, if indigent, the court shall appoint an attorney. All written documentation submitted to the two qualified examiners shall also be provided to counsel for the person named in the petition and to the district attorney and attorney general.

(d) Any person subject to an examination pursuant to the provisions of this section may retain a psychologist or psychiatrist who meets the requirements of a qualified examiner, as defined in section 1, to perform an examination on his behalf. If the person named in the petition is indigent, the court shall provide for such qualified examiner.

**Chapter 123A: Section 14. Trial by jury; right to counsel; admissibility of evidence; commitment to treatment; temporary commitments pending disposition of petitions**

Section 14. (a) The district attorney, or the attorney general at the request of the district attorney, may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand, in writing, that the case be tried to a jury and, upon such demand, the case shall be tried to a jury. Such petition shall be made within 14 days of the filing of the report of the two qualified examiners. If such petition is timely filed within the allowed time, the court shall notify the person named in the petition and his attorney, the district attorney and the attorney general that a trial by jury will be held within 60 days to determine whether such person is a sexually dangerous person. The trial may be continued upon motion of either party for good cause shown or by the court on its own motion if the interests of justice so require, unless the person named in the petition will be substantially prejudiced thereby. The person named in the petition shall be confined to a secure facility for the duration of the trial.

(b) The person named in the petition shall be entitled to the assistance of counsel and shall be entitled to have counsel appointed if he is indigent in accordance with section 2 of chapter 211D. In addition, the person named in the petition may retain experts or professional persons to perform an examination on his behalf. Such experts or professional persons shall be permitted to have reasonable access to such person for the purpose of the examination as well as to all relevant medical and psychological records and reports of the person named in the petition. If the person named in the petition is indigent under said section 2 of said chapter 211D, the court shall, upon such person's request, determine whether the expert or professional services are necessary and shall determine reasonable compensation for such services. If the court so determines, the court shall assist the person named in the petition in obtaining an expert or professional person to perform an examination and participate in the trial on such person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred and compensation received in the same case or for the same services from any other source. The court shall inform the person named in the petition of his rights under this section before the trial commences. The person named in the petition shall be entitled to have process issued from the court to compel the attendance of witnesses on his behalf. If such person intends to rely upon the testimony or report of his qualified examiner, the report must be filed with the court and a copy must be provided to the district attorney and attorney general no later than ten days prior to the scheduled trial.

(c) Juvenile and adult court probation records, psychiatric and psychological records and reports of the person named in the petition, including the report of any qualified examiner, as defined in section 1, and

filed under this chapter, police reports relating to such person's prior sexual offenses, incident reports arising out of such person's incarceration or custody, oral or written statements prepared for and to be offered at the trial by the victims of the person who is the subject of the petition and any other evidence tending to show that such person is or is not a sexually dangerous person shall be admissible at the trial if such written information has been provided to opposing counsel reasonably in advance of trial.

(d) If after the trial, the jury finds unanimously and beyond a reasonable doubt that the person named in the petition is a sexually dangerous person, such person shall be committed to the treatment center or, if such person is a youth who has been adjudicated as a delinquent, to the department of youth services until he reaches his twenty-first birthday, and then to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life until discharged pursuant to the provisions of section 9. The order of commitment, which shall be forwarded to the treatment center and to the appropriate agency with jurisdiction, shall become effective on the date of such person's parole or in all other cases, including persons sentenced to community parole supervision for life pursuant to section 133C of chapter 127, on the date of discharge from jail, the house of correction, prison or facility of the department of youth services.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the final judgment, the court may temporarily commit such person to the treatment center pending disposition of the petition.

### **Chapter 123A: Section 15. Competence to stand trial; hearing**

Section 15. If a person who has been charged with a sexual offense has been found incompetent to stand trial and his commitment is sought and probable cause has been determined to exist pursuant to section 12, the court, without a jury, shall hear evidence and determine whether the person did commit the act or acts charged. The hearing on the issue of whether the person did commit the act or acts charged shall comply with all procedures specified in section 14, except with respect to trial by jury. The rules of evidence applicable in criminal cases shall apply and all rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence the court shall make specific findings relative to whether the person did commit the act or acts charged; the extent to which the cause of the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, subject to appeal by the person named in the petition and the court may proceed to consider whether the person is a sexually dangerous person according to the procedures set forth in sections 13 and 14. Any determination made under this section shall not be admissible in any subsequent criminal proceeding.

### **Chapter 123A: Section 16. Annual reports describing treatments offered**

Section 16. The department of correction and the department of youth services shall annually prepare reports describing the treatment offered to each person who has been committed to the treatment center or the department of youth services as a sexually dangerous person and, without disclosing the identity of such persons, describe the treatment provided. The annual reports shall be submitted, on or before

January 1, 2000 and every November 1 thereafter, to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall submit on or before December 12, 1999 its plan for the administration and management of the treatment center to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall promptly notify said committees of any modifications to said plan.

(From Mass. Legal Services and Mass Probate Court)

### **GENERAL INFORMATION REGARDING GUARDIANSHIPS AND CONSERVATORSHIPS**

Guardians may be appointed for protection of the person only. A conservator must be appointed to protect property and business affairs of a person in need of protection.

**A guardian may be appointed for an incapacitated person** “who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.”

**A conservator may be appointed for a person to be protected** if “the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance, or because the individual is detained or otherwise unable to return to the United States; and the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person’s support and that protection is necessary or desirable to obtain or provide money.”

**Note the difference in terminology. Guardians are appointed for incapacitated persons, and conservators are appointed for persons to be protected.**

### **LIMITED GUARDIANSHIP**

All too often plenary or full guardianship appointments are made when a person’s incapacities are limited in scope and the individual displays only some areas of diminished functionality. The new Medical Certificate form requires information which will highlight functional capacities and incapacities and promote the creation of limited guardianships. The concept of limited guardianship allows the Court to address specific areas of incapacity and tailor guardianship decrees (letters) to meet an individual’s unique circumstances. Individuals may be competent for one purpose and not competent for another. For example, if appropriate, a guardianship may be limited or apply only to medical treatment decisions. Orders curtailing or removing an individual’s liberty should be made only to the extent absolutely necessary to protect the individual from harm.

### **LIMITED CONSERVATORSHIP AND PROTECTIVE ORDERS**

Similarly, the concept of conservatorship includes both limited and unlimited conservatorships. A conservator should be appointed only when necessary, and then with only those powers that are necessitated by the individual’s actual limitations. For example, if appropriate, a conservatorship may be limited or apply only to investments or real estate and leave to the protected person the ability to receive pension income and pay for daily or monthly expenses. In addition, it may be the case that a conservatorship is not necessary at all but that a narrowly tailored ‘protective order’ will suffice to protect an individual’s assets/property. For example, the Court, without appointing a conservator, may authorize, direct or ratify any contract, trust, or other transaction relating to the protected person’s property and business affairs if the Court determines that the transaction is in the best interests of the protected person.

### **TEMPORARY GUARDIANSHIP**

While a petition for the appointment of a guardian is pending, if an incapacitated person has no guardian, and the Court finds that an emergency exists that will likely result in immediate and substantial harm to the health, safety or welfare of the person alleged to be incapacitated, and no other person appears to have authority to act in the circumstances, on appropriate motion, the Court may appoint a temporary guardian who may exercise only those specific powers granted in the order. The appointment may be for a period



of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the Court may order an appointment for a longer period to a date certain. The Court may for good cause shown extend the appointment for additional 90 day periods.

#### **TEMPORARY CONSERVATORSHIP**

While a petition for the appointment of a conservator is pending, if a person to be protected has no conservator, and the Court finds that an immediate and/or urgent situation exists that will likely result in substantial harm to the property, income or entitlements of the person to be protected or those entitled to the person's support, and no other person appears to have authority to act in the circumstances, on appropriate motion, the Court may appoint a temporary conservator who may exercise only those specific powers granted in the order. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the Court may order an appointment for a longer period to a date certain. The Court may for good cause shown extend the appointment for additional 90 day periods.

#### **FULL/PLENARY GUARDIANSHIP**

A full/plenary guardianship generally removes from an incapacitated person all personal decision-making responsibility and authority. Under the current law, clinicians and the Court must now consider whether an incapacitated person's legal rights can be preserved in specific areas and whether the guardianship can be limited or tailored accordingly. See discussion of Limited Guardianship above.

#### **FULL/PLENARY CONSERVATORSHIP**

A full/plenary conservatorship generally removes from a person to be protected all control over his or her assets. Under current law, the Court must now consider if a conservatorship can be limited which means that the Court can preserve legal rights in specific areas. See discussion of Limited Conservatorship and Protective Orders above.

#### **MEDICAL CERTIFICATE**

In guardianship cases involving incapacitated persons and in conservatorship cases involving persons to be protected, a Medical Certificate must be filed. For cases involving persons with an intellectual disability, see below. A Medical Certificate must be dated within 30 days of the filing of the petition. In addition, a Medical Certificate must be dated and the capacity/competency examination must take place within 30 days prior to the hearing. Thus, it is possible that a new medical Certificate might have to be procured prior to the permanent hearing. A Medical Certificate may be completed by a physician or licensed psychologist or a certified psychiatric nurse clinical specialist.

#### **CLINICAL TEAM REPORT**

For persons with an intellectual disability, a Clinical Team Report (CTR) must be filed. A Clinical Team Report must be dated within 180 days of the filing of the petition. A Clinical Team Report must be completed by a physician, a licensed psychologist, and a social worker, each of whom is experienced in the evaluation of persons with an intellectual disability.

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## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 190B. MASSACHUSETTS UNIFORM PROBATE CODE**

### **Chapter 190B: Section 1-404. Guardian ad litem and next friend**

(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a person with an intellectual disability, an autistic person, or person under disability, or a person not ascertained or not in being, may be or may become interested in any property, real or personal, or in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto, or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor, person with an intellectual disability, autistic person, or person under disability or not ascertained or not in being; and a judgment, order or decree in such proceedings, made after such appointment, should be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

(b) The reasonable expenses of such guardian ad litem or next friend, including compensation and counsel fees, shall be determined by the court and paid as it may order, either out of the estate or by the plaintiff, petitioner or the commonwealth. If such expenses are to be paid by the plaintiff or petitioner execution therefor may issue in the name of the guardian ad litem or next friend.

(c) Nothing in this code shall affect the power of a court to appoint a guardian or conservator to defend the interests of a minor impleaded in such court, or interested in a suit or matter there pending, nor the power of such court to appoint or allow a person, as next friend for a minor, to commence, prosecute or defend a suit in his behalf.

(d) If it appears in a probate or appointment proceeding that a spouse, heir at law or devisee is an incapacitated or protected person or a minor, notice of all proceedings shall be given to the incapacitated or protected person or minor and to his guardian or conservator. Unless the spouse, heir or devisee is represented by someone other than the petitioner or is under guardianship or conservatorship, the court shall appoint a guardian ad litem who shall receive notice of all proceedings.

## **ARTICLE 5. PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY**

### **Chapter 190B: Section 5-101. Definitions and inclusions**

As used in parts 1 to 4, inclusive, of this article:

(1) "Claims", in respect to a protected person, includes liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator", a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator, temporary conservator and special conservator.

(3) "Court", the probate and family court department of the trial court and includes the district court and juvenile court departments of the trial court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such district or juvenile court.

(4) "Disability", cause for a protective order as described in section 5-401.

- (5) "Estate", includes the property of the person whose affairs are subject to this article.
- (6) "Guardian", a person who has qualified as a guardian of a minor or incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a guardian ad litem.
- (7) "Guardian ad litem", a person or organization appointed under sections 1-404 and 5-106 of this code.
- (8) "Health care proxy", a health care proxy executed pursuant to chapter 201D, a durable power of attorney for health care executed prior to the enactment of chapter 201D and similar instruments for appointment of health care agents executed in accordance with the laws of other jurisdictions.
- (9) "Incapacitated person", an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.
- (10) "Lease", includes an oil, gas, or other mineral lease.
- (11) "Letters", includes certificate of guardianship and certificate of conservatorship.
- (12) "Person with an intellectual disability", an individual who has a substantial limitation in present functioning beginning before age 18, manifested by significantly subaverage intellectual functioning existing concurrently with related limitations in 2 or more of the following applicable adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functioning academics, leisure, and work.
- (13) "Minor", a person who is under 18 years of age.
- (14) "Mortgage", any conveyance, agreement, or arrangement in which property is used as collateral.
- (15) "Nursing facility", an institution or a distinct part of an institution which is primarily engaged in providing to residents:
- (A) skilled nursing care and related services for residents who require medical or nursing care,
  - (B) rehabilitation services for the rehabilitation of injured, disabled or sick persons, or
  - (C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities, and is not primarily a mental health facility or facility for persons with an intellectual disability.
- (16) "Organization", includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.
- (17) "Parent", a natural or adoptive parent other than a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender.
- (18) "Person", an individual or an organization.
- (19) "Petition", a written request to the court for an order after notice.
- (20) "Proceeding", includes action at law and suit in equity.
- (21) "Property", includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- (22) "Protected person", a minor or other person for whom a conservator has been appointed or other protective order has been made as provided in sections 5-407 and 5-408.
- (23) "Protective proceeding", a proceeding under the provisions of part 4 of this article.
- (24) "Security", includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.
- (25) "Ward", a person for whom a guardian has been appointed solely because of minority.

### **Chapter 190B: Section 5-102. Facility of payment or delivery**

(a) Any person under a duty to pay or deliver money or personal property to a minor may perform the duty, in amounts not exceeding \$5,000 a year, by paying or delivering the money or property to:

- (1) the minor;
- (2) any person having the care and custody of the minor with whom the minor resides;
- (3) a guardian of the minor;
- (4) a custodian under the uniform transfers to minors act or a custodial trustee under the uniform custodial trust act; or
- (5) a financial institution as a deposit in a state or federally insured interest bearing account or certificate in the sole name of the minor with notice of the deposit to the minor.

(b) If the person making payment or delivery knows that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending, the person may make payment or delivery only to the conservator.

(c) Persons receiving money or property for a minor under subsection (a)(2) are obligated to apply the money to the support, care, education, health or welfare of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for necessary goods and services. Any excess sums shall be preserved for future support, care, education, health or welfare of the minor and any balance not so used and any property received for the minor shall be turned over to the minor when majority is attained.

(d) A person who pays or delivers money or property in accordance with this section is not responsible for the proper application thereof.

### **Chapter 190B: Section 5-103. Delegation of powers by parent or guardian**

(a) A parent or parents of a minor, other than a parent or parents whose parental rights have been terminated or a parent who has signed a voluntary surrender, or a guardian or guardians of a minor or incapacitated person may appoint a temporary agent for a period not exceeding 60 days, and may delegate to such agent any power that the parent or guardian has regarding the care, custody or property of the minor child, ward or incapacitated person, except the power to consent to marriage or adoption of a minor; provided, however, that no parent or guardian shall appoint a temporary agent when a court has ordered that the minor child be placed in the custody of a person other than the parent or guardian.

(b) Any delegation under this section shall be by a writing signed by, or at the direction of, the parent(s) or guardian(s) and attested by at least 2 witnesses 18 years of age or older, neither of whom is the temporary agent together with the written acceptance of the temporary agent.

(c) A parent or guardian may not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor unless the nonappointing parent consents to the appointment in writing. A parent may not appoint a temporary agent if the appointing parent's parental rights have been terminated or a parent who has signed a voluntary surrender.

(d) Any delegation under this section may be revoked or amended by the appointing parent(s) or guardian(s) and delivered to all interested persons. The authority of the temporary agent may be limited or altered by the court.

### **Chapter 190B: Section 5-104. [Reserved.]**

### **Chapter 190B: Section 5-105. Venue**

(a) Provided that the court has jurisdiction:

(1) venue for a guardianship proceeding for a minor is in the court at the place where the minor resides at the time the proceedings are commenced, or, in the case of a nomination of a guardian by the will of a parent or guardian, in the court of the county in which the will was or could be probated except venue for

a guardianship proceeding for a minor in district court or juvenile court shall be in the court where the underlying proceeding was filed;

(2) venue for a guardianship proceeding for an incapacitated person is in the court at the place where the incapacitated person resides at the time the proceedings are commenced, or, in the case of a nomination of by the will of a parent or spouse, in the court of the county in which the will was or could be probated. If the incapacitated person has been admitted to a facility referred to in chapter one hundred eleven, section 70E pursuant to an order of a court of competent jurisdiction, venue is also in the county in which that facility is located; and

(3) venue for a protective proceeding is in the court at the place where the person to be protected resides at the time the proceedings are commenced, whether or not a guardian has been appointed in another place or, if the person to be protected does not reside in the commonwealth, in the court at the place where property of the person is located.

(b) If a proceeding under this code is brought in more than one place in the commonwealth, the court at the place in which a proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

### **Chapter 190B: Section 5-106. Appointment of counsel; guardian ad litem**

(a) After filing of a petition for appointment of a guardian, conservator or other protective order, if the ward, incapacitated person or person to be protected or someone on his behalf requests appointment of counsel; or if the court determines at any time in the proceeding that the interests of the ward, incapacitated person or person to be protected are or may be inadequately represented, the court shall appoint an attorney to represent the person, giving consideration to the choice of the person if 14 or more years of age. If the ward, incapacitated person or person to be protected has adequate resources, his counsel shall be compensated from the estate, unless the court shall order that such compensation be paid by the petitioner. Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth. This section shall not be interpreted to abridge or limit the right of any ward, incapacitated person or person to be protected to retain counsel of his own choice and to prosecute or defend a petition under this article.

(b) The court may appoint as guardian ad litem, an individual or any public or charitable agency to investigate the condition of the ward, incapacitated person or person to be protected and make appropriate recommendations to the court.

(c) The incapacitated person or person to be protected is entitled to be present at any hearing in person. A ward, if 14 or more years of age, is entitled to be present at any hearing in person unless the court, upon written findings, determines that the best interest of the ward will not be served thereby. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including any physician or other qualified person and any guardian ad litem. The issue may be determined at a closed hearing if the person or counsel for the person so requests.

(d) Any person may apply for permission to provide information in the proceeding and the court may grant the request, with or without hearing, upon determining that the best interest of the person to be protected will be served thereby. The court may attach appropriate conditions to the permission.

### **Chapter 190B: Section 5-107. Protection of minors**

The court shall not appoint as guardian any person petitioning for guardianship who: (i) is currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person. The court shall terminate a guardianship appointed under this section if, upon petition, it is established that the guardian is: (i) currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily

injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person.

### **Chapter 190B: Section 5-201. Appointment and status of guardian of minor**

A person may become a guardian of a minor by appointment by parent or guardian or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward. The district or juvenile court may appoint guardians of minors if the person who is the subject of the petition is a minor and there is a proceeding before such district or juvenile court and shall have continuing jurisdiction over resignation, removal, reporting, and other proceedings related to the guardianship.

### **Chapter 190B: Section 5-202. Parental or guardian appointment of guardian for minor**

(a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses, may appoint a guardian for any minor child the parent has or may have in the future, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.

(b) A guardian, by will or other writing signed by the guardian and attested by at least 2 witnesses, may appoint a guardian for any minor child for whom the guardian serves, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.

(c) Upon petition of an appointing parent or guardian, upon finding that the appointing parent or guardian will likely become unable to care for the minor within 2 years or less, and after notice as provided in section 5-206(b), the court, before the appointment becomes effective, may confirm the parent's or guardian's selection of a guardian and terminate the rights of others under section 5-203.

(d) Subject to section 5-203, the appointment of a guardian becomes effective on the first to occur of the appointing parent's or guardian's death, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the minor unless the minor is in the care or custody of a person other than a parent pursuant to sections 24, 25, 26 and 39G of chapter 119, chapter 201; or section 3 of chapter 210.

(e) Within 30 days after the appointment becomes effective, a guardian shall:

(1) file a notice of acceptance of appointment and a copy of the will or other nominating instrument with the court of the county in which the will was or could be probated or, in the case of another nominating instrument, with the court of the county in which the minor resides; and

(2) unless the appointment was previously confirmed by the court, petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-206(b).

(f) The parental appointment of a guardian shall not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who dies or was adjudged incapacitated has priority.

(g) The powers of a guardian who timely complies with the requirements of subsection (e) relate back to give acts by the guardian which are of benefit to the minor and which occurred on or after the date the guardian was eligible to file an acceptance of office the same effect as those which occurred after the filing.

(h) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court, the revocation of the appointment by the appointing parent or guardian, or the filing of an objection pursuant to section 5-203.

### **Chapter 190B: Section 5-203. Objection by minor fourteen or older to parental appointment**

Except where the court has previously confirmed a nominee under section 5-202(c),

(i) a minor 14 or more years of age who is the subject of a parental appointment,

(ii) the other parent, if that parent's parental rights have not been terminated, or

(iii) a person other than a parent having care or custody of the minor or with whom the minor has resided during the 60 preceding days, excluding a foster parent may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An objection shall not preclude appointment of the nominee by the court in a proper proceeding of the parental nominee or any other suitable person. The court may treat the filing of an objection as a petition for the appointment of a temporary guardian, and proceed accordingly.

### **Chapter 190B: Section 5-204. Court appointment of guardian of minor; conditions for appointment; temporary guardian**

(a) The court may appoint a guardian for a minor if (i) the minor's parents are deceased or incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated, (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or the surviving parent, to be unavailable or unfit to have custody. A guardian appointed pursuant to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(b) While a petition for appointment of a guardian is pending, if a minor has no guardian, and the court finds that following the procedures of this article will likely result in substantial harm to the health, safety or welfare of the minor occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion, the court may appoint a temporary guardian who may exercise those powers granted in the order. A motion for appointment of a temporary guardian shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, and the actions which will be necessary by the temporary guardian to avoid the occurrence of the harm. Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion. The appointment of a temporary guardian for a minor may occur even though the conditions described in subsection (a) have not been established. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(c) If an appointed guardian is not effectively performing duties and the court further finds that the welfare of the minor requires immediate action, it may appoint, with or without notice, a special guardian for the minor having the powers of a general guardian, except as limited in the letters of appointment. The authority of any guardian previously appointed is suspended as long as a special guardian has authority. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(d) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary guardian in hand to the minor if over the age of 14 years and by delivery or by mail to all persons named in the petition for appointment of guardian. A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.

(e) If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary guardian, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the minor, if the minor is 14 or more years of age, as the court may order and post-appointment notice of any appointment is given to the minor and those named in the petition for appointment of guardian stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate. The court shall hear said motion as a de novo matter, as expeditiously as possible. A certificate stating that such notice has been given shall be filed with the court

within 7 days following the appointment. Upon failure to file such certificate the court may on its own motion vacate said order.

(f) In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.

### **Chapter 190B: Section 5-205. [Reserved.]**

### **Chapter 190B: Section 5-206. Procedure for court appointment of guardian of minor**

(a) A minor or any person interested in the welfare of the minor may petition for appointment of a guardian.

(b) After the filing of a petition, notice shall be given in the manner prescribed by section 1-401 by the petitioner to:

(1) the minor, if the minor is 14 or more years of age and is not the petitioner;

(2) any person who has been awarded care or custody of the minor by a court of competent jurisdiction, whom is alleged to have had the principal care or custody of the minor or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents;

(3) any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender, or, if none, brothers and sisters, or, if none, heirs apparent or presumptive;

(4) the spouse if the minor is married;

(5) any person nominated as guardian by the minor if the minor has attained 14 years of age;

(6) any parental or guardian appointee whose appointment has not been prevented or terminated under section 5-203;

(7) any guardian or conservator currently acting for the minor in the commonwealth or elsewhere; and

(8) the United States veterans administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said administration or its successors.

(c) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 5-204(a) have been met, and the welfare and best interest of the minor will be served by the requested appointment, it shall make the appointment and issue letters. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interest of the minor.

### **Chapter 190B: Section 5-207. Court appointment of guardian of minor; qualifications; priority of minor's nominee**

(a) The court may appoint as guardian any person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the court finds the appointment contrary to the best interest of the minor.

(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this article and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor shall be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, shall be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, additional powers may be granted or existing powers may be withdrawn.

### **Chapter 190B: Section 5-208. Bond; consent to service by acceptance of appointment; notice**

(a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of



the duties of the office. By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the court records and to the address then known to the petitioner.

(b) A surety shall be required on the bond of a guardian of a minor unless the court determines that it is in the best interest of the minor to waive the surety or to require additional sureties.

(c) The requirements and provisions of section 5-411 apply to guardians appointed under this part.

### **Chapter 190B: Section 5-209. Powers, duties, rights and immunities of guardian of minor; limitations**

(a) A guardian of a ward has the powers and responsibilities of a parent regarding the ward's support, care, education, health and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence and prudence.

(b) In particular and without qualifying the foregoing, a guardian of a ward or incapacitated person shall:

(1) if consistent with the terms of any order by a court of competent jurisdiction take custody of the person of the ward or incapacitated person and establish his place of abode within or without the commonwealth;

(2) become or remain personally acquainted with the ward or incapacitated person and maintain sufficient contact with the person to know of his capacities, limitations, needs, opportunities, and physical and mental health;

(3) take reasonable care of the personal effects and commence protective proceedings if necessary to protect other property of the ward or incapacitated person;

(4) apply any available money of the ward or incapacitated person to his current needs for support, care, education health and welfare; provided that if any person has a legal duty to support a minor and has sufficient funds, the minor's funds are not to be used to discharge the legal obligation of support without prior order of the court unless the court determines that the minor's funds may be used for support;

(5) conserve any excess money of the person for his future needs, but if a conservator has been appointed for the estate of the ward or incapacitated person, the guardian, at least quarterly, shall pay to the conservator money of the ward or incapacitated person to be conserved for his future needs; and

(6) report the condition of the ward or protected person and of his estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the respondent's welfare or as required by court rule, but not less than annually.

(c) A guardian of a ward or incapacitated person may:

(1) apply for and receive money for the support of the ward or incapacitated person otherwise payable to his parent, guardian, or custodian for his support under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) if no conservator for the estate of the ward or incapacitated person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or incapacitated person or to pay sums for his benefit;

(3) if consistent with the terms of any order by a court of competent jurisdiction and sections 5-306A and 5-309, consent to medical or other professional care, treatment, or advice for the ward or incapacitated person without liability by reason of the consent for injury to the ward or incapacitated person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(4) consent or refuse to consent to the marriage, divorce or adoption of the ward or incapacitated person;

(5) if reasonable under all of the circumstances, delegate to the ward or incapacitated person certain responsibilities for decisions affecting his well-being; and

(6) utilize the services of agencies and individuals to provide necessary and desirable social and protective services of different types appropriate to such person including, but not limited to, counseling services, advocacy services, legal services, and other aid as the guardian deems to be in the interest of such person.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward or incapacitated person, but only as approved by order of the court and only from the person's estate. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

(e) A guardian need not use the guardian's personal funds for the ward or incapacitated person's expenses. A guardian is not liable to a third person for acts of the respondent solely by reason of the relationship.

### **Chapter 190B: Section 5-210. Termination of appointment of guardian; general**

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination shall not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward. Resignation of a guardian shall not terminate the guardianship until it has been approved by the court. A parental appointment under an informally probated will is voided if the will is later denied probate in a formal proceeding.

### **Chapter 190B: Section 5-211. [Reserved.]**

### **Chapter 190B: Section 5-212. Resignation, removal, and other post-appointment proceedings**

(a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, the parents of the ward, provided that the parental rights have not been terminated or a voluntary surrender has not been signed, and any other person as ordered by the court.

(c) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate, including appointment of a successor guardian.

### **Chapter 190B: Section 5-301. Nomination of guardian for incapacitated person by will or other writing**

(a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses, may nominate a guardian for an unmarried adult child who the parent believes is an incapacitated person, may revoke or amend the nomination, and may specify any desired limitations on the powers to be granted to the guardian.

(b) An individual by will or other writing signed by the individual and attested by at least 2 witnesses, may nominate a guardian for his spouse who the individual believes is an incapacitated person, may revoke or amend the nomination, and may specify any desired limitations on the powers to be granted to the guardian.

### **Chapter 190B: Section 5-302. [Reserved.]**

### **Chapter 190B: Section 5-303. Procedure for court appointment of a guardian of an incapacitated person**

(a) An incapacitated person or any person interested in the welfare of the person alleged to be incapacitated may petition for a determination of incapacity, in whole or in part, and the appointment of a guardian, limited or general.

(b) The petition shall set forth the petitioner's name, residence and address, relationship to the person alleged to be incapacitated, and interest in the appointment, and, to the extent known, set forth the following with respect to the person alleged to be incapacitated and the relief requested:

(1) the name and age of the person alleged to be incapacitated, his residence and the date residence was established;

(2) the address of the place it is proposed that the person alleged to be incapacitated will reside if the appointment is made;

(3) a brief description of the nature of the alleged incapacity, and whether:

(A) the person is alleged to have an intellectual disability;

(B) the petitioner seeks court authorization to consent to treatment for which a substituted judgment determination may be required; or

(C) the petitioner seeks court authorization to admit the person alleged to be incapacitated to a nursing facility.

(4) the name and address of the proposed guardian, his relationship to the person alleged to be incapacitated, the reason why he or she should be selected, and the basis of the claim, if any, for priority for appointment;

(5) the name and address of the person's:

(A) spouse; and

(B) children, or if none, parents and brothers and sisters, or, if none, heirs apparent or presumptive and the ages of any who are minors, so far as known or ascertainable with reasonable diligence by the petitioner;

(6) the name and address of the person who has care or custody of the person alleged to be incapacitated or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization) preceding the filing of the petition;

(7) the name and address of any representative payee;

(8) the name and address of any person nominated as guardian by the person alleged to be incapacitated, and the name and address of any guardian or conservator currently acting for him in the commonwealth or elsewhere;

(9) the name and address of any agent designated under a durable power of attorney or health care proxy of which the person alleged to be incapacitated is the principal, if known to the petitioner, and the petitioner shall attach a copy of any such power of attorney or health care proxy, if available;

(10) the reason why a guardianship is necessary, the type of guardianship requested, and if a general guardianship, the reason why limited guardianship is inappropriate, and if a limited guardianship, the powers to be granted to the limited guardian;

(11) a statement:

(A) that a medical certificate dated within 30 days of the filing of the petition or, in the case of a person alleged to have an intellectual disability, a clinical team report dated within 180 days of the filing of the petition, is in the possession of the court or accompanies the petition; or

(B) of the nature of any circumstance which makes it impossible to obtain a medical certificate or clinical team report which shall be supported by affidavit or affidavits meeting the requirement set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate or clinical team report; and

(12) a general statement of the property of the person alleged to be incapacitated with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

(c) Unless otherwise directed by the court, a medical certificate filed under this article shall be signed by a physician or licensed psychologist and shall contain:

(1) a description of the nature, type, and extent of the person's specific cognitive and functional limitations;

(2) an evaluation of the person's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(4) the date of any examination upon which the report is based.

(d) A person alleged to have an intellectual disability shall be examined by a clinical team consisting of a physician, a licensed psychologist and a social worker, each of whom is experienced in the evaluation of persons with an intellectual disability, who shall report their conclusions to the Court.

(e) Reasonable expenses incurred in any examination conducted pursuant to this section shall be paid by the petitioner, the estate of the person alleged to be incapacitated, or by the commonwealth as the court may determine.

#### **Chapter 190B: Section 5-304. Notice in guardianship or conservatorship proceeding**

(a) In a proceeding for the appointment of a guardian or conservator or for protective order, and if notice is required in a proceeding for appointment of a temporary guardian or temporary conservator, notice shall be given by the petitioner to:

(1) the person alleged to be incapacitated or the person to be protected and his spouse and children, or, if none, parents, brothers and sisters, or, if none, heirs apparent or presumptive;

(2) any person who is serving as guardian, conservator, or who has the care or custody of the person or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization) preceding the filing of the petition;

(3) in case no other person is notified under paragraph (1), at least one of the nearest adult relatives, if any can be found;

(4) all other persons named in the petition;

(5) if the person is alleged to be intellectually disabled, to the department of developmental services;

(6) the United States veteran's administration or its successor, if the person is entitled to any benefit, estate or income paid or payable by or through said administration or its successor; and

(7) any other person as directed by the court.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian or conservator shall be given to the incapacitated person, person to be protected, the guardian, the conservator and any other person as ordered by the court.

(c) Notice shall be served personally on the person alleged to be incapacitated or the person to be protected. In all other cases, required notices shall be given as provided in section 1-401.

(d) A person alleged to be incapacitated or person to be protected may not waive notice.

#### **Chapter 190B: Section 5-305. Who may be guardian; parties**

(a) Any qualified person may be appointed guardian of an incapacitated person.

(b) Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.

(c) Except as provided in subsection (b), the following, if suitable, are entitled to consideration for appointment in the order listed:

- (1) the spouse of the incapacitated person or a person nominated by will of a deceased spouse or by other writing signed by the spouse and attested by at least 2 witnesses;
  - (2) a parent of the incapacitated person, or a person nominated pursuant to section 5-301; and
  - (3) any person the court deems appropriate.
- (d) With respect to persons having equal priority, the court shall select the one it deems best suited to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority or no priority.

### **Chapter 190B: Section 5-306. Findings; order of appointment**

(a) The court shall exercise the authority conferred in this part so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's limitations or other conditions warranting the procedure.

(b) Upon hearing, the court may appoint a guardian as requested if it finds that:

- (1) a qualified person seeks appointment;
- (2) venue is proper;
- (3) the required notices have been given;
- (4) any required medical certificate is dated and the examination has taken place within 30 days prior to the hearing;
- (5) any required clinical team report is dated and the examinations have taken place within 180 days prior to the filing of the petition;
- (6) the person for whom a guardian is sought is an incapacitated person;
- (7) the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person; and
- (8) the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance.

The court, on appropriate findings, may enter any appropriate order, or dismiss the proceedings.

(c) The court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, may limit the powers of a guardian otherwise conferred by parts 1 to 4, inclusive, of this article and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

### **Chapter 190B: Section 5-306A. Substituted judgment**

(a) No guardian, temporary guardian or special guardian of a minor or an incapacitated person shall have the authority to consent to treatment for which substituted judgment determination may be required, provided that the court shall authorize such treatment when it (i) specifically finds using the substituted judgment standard that the person, if not incapacitated, would consent to such treatment and (ii) specifically approves and authorizes a treatment plan and endorses said plan in its order or decree. The court shall not authorize such treatment plan except after a hearing for the purpose of which counsel shall be provided for any indigent minor or incapacitated person. Said hearing shall be held as soon as is practicable; provided, however, that if the petitioner requests a temporary order on the grounds that the welfare of the minor or person alleged to be incapacitated requires an immediate authorization of treatment, the court shall act on such request in accordance with the procedures set forth in section 5-308.

(b) The court may delegate to a guardian the authority to monitor the treatment process to ensure that a treatment plan is followed, provided a guardian is readily available for such purpose. Approval of a treatment plan shall not be withheld, however, because a guardian is not available to serve as monitor. In such circumstances, the court shall appoint a suitable person to monitor the treatment process to ensure that the treatment plan is followed. Reasonable expense incurred in such monitoring may be paid out of

the estate of such person, by the petitioner, or, subject to appropriation, by the commonwealth, as may be determined by the court.

(c) Each order authorizing a treatment plan pursuant to this section shall provide for periodic review at least annually to determine whether the incapacitated person's condition and circumstances have substantially changed such that, if competent, the incapacitated person would no longer consent to the treatment authorized therein. Each such order shall further provide for an expiration date beyond which the authority to provide treatment thereunder shall, if not extended by the court, terminate.

(d) An incapacitated person is required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds that there exist extraordinary circumstances requiring the absence of the incapacitated person in which event the attendance of his counsel shall suffice; provided that the court may base its findings exclusively upon affidavits and other documentary evidence if it (1) determines after careful inquiry and upon representations of counsel, that there are no contested issues of fact and (2) includes in its findings the reason that oral testimony was not required.

(e) Any privilege established by section 135A of chapter 112 or by section 20B of chapter 233 relating to confidential communications shall not prohibit the filing of reports or affidavits, or the giving of testimony, pursuant to this part, for the purposes of obtaining treatment of a person alleged to be incapacitated; provided, however, that such person has been informed prior to making such communication that they may be used for such purpose and has waived the privilege.

#### **Chapter 190B: Section 5-307. Bond; acceptance of appointment; consent to jurisdiction**

(a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office. By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the court records and to the address then known to the petitioner.

(b) A surety shall be required on the bond of a guardian of an incapacitated person unless the court determines that it is in the best interest of the incapacitated person to waive the surety or to require additional sureties. Language in a durable power of attorney or health care proxy waiving the guardian's bond shall be deemed to be a request for waiver of any necessity of sureties on a bond.

(c) The requirements and provisions of section 5-411 apply to guardians appointed under this part.

#### **Chapter 190B: Section 5-308. Emergency orders; temporary guardians**

(a) While a petition for appointment of a guardian is pending, if an incapacitated person has no guardian, and the court finds that following the procedures of this article will likely result in immediate and substantial harm to the health, safety or welfare of the person alleged to be incapacitated occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion the court may appoint a temporary guardian who may exercise only those powers granted in the order. A motion for appointment of a temporary guardian shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, the actions which will be necessary by the temporary guardian to avoid the occurrence of the harm and the name and address of any agent designated under a health care proxy or durable power of attorney of which the person alleged to be incapacitated is the principal, and the petitioner shall attach a copy of any such health care proxy or durable power of attorney, if available. Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(b) If an appointed guardian is not effectively performing duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a special guardian for the incapacitated person having the powers of a general guardian, except as limited in the letters of appointment. The authority of any guardian previously appointed by the court is suspended as long as a special guardian has authority. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(c) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary guardian in hand to the person alleged to be incapacitated and by delivery or by mail to all persons named in the petition for appointment of guardian. A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.

(d) If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary guardian, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the person alleged to be incapacitated as the court may order and post appointment notice of any appointment is given to the person alleged to be incapacitated and those named in the petition for appointment of guardian stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate. The court shall hear said motion as a de novo matter, as expeditiously as possible. A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment. Upon failure to file such certificate the court may on its own motion vacate said order.

(e) In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.

(f) Appointment of a temporary guardian, with or without notice, is not a final determination of a person's incapacity.

(g) The court may remove a temporary guardian at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of parts 1, 2, 3 and 4 of this article concerning guardians apply to temporary guardians.

### **Chapter 190B: Section 5-309. Powers, duties, rights and immunities of guardians, limitations**

(a) Except as limited pursuant to section 5-306(c), a guardian of an incapacitated person shall make decisions regarding the incapacitated person's support, care, education, health and welfare, but a guardian is not personally liable for the incapacitated person's expenses and is not liable to third persons by reason of that relationship for acts of the incapacitated person. A guardian shall exercise authority only as necessitated by the incapacitated person's mental and adaptive limitations, and, to the extent possible, shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, to the extent known, shall consider the expressed desires and personal values of the incapacitated person when making decisions, and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A guardian shall immediately notify the court if the incapacitated person's condition has changed so that he or she is capable of exercising rights previously limited. In addition, a guardian has the duties, powers and responsibilities of a guardian of a minor as described in section 5-209(b), (c), (d) and (e).

(b) A guardian shall report in writing the condition of the incapacitated person and account for funds and other assets subject to the guardian's possession or control within 60 days following appointment, at least annually thereafter, and when otherwise ordered by the court. A report shall briefly state:

- (1) the current mental, physical and social condition of the incapacitated person;
  - (2) the living arrangements for all addresses of the incapacitated person during the reporting period;
  - (3) the medical, educational, vocational and other services provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care;
  - (4) a summary of the guardian's visits with and activities on the incapacitated person's behalf and the extent to which the incapacitated person participated in decision-making;
  - (5) if the incapacitated person is institutionalized, whether the guardian considers the current treatment or habilitation plan to be in the incapacitated person's best interests;
  - (6) plans regarding future care; and
  - (7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.
- (c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.
- (d) The court may appoint a guardian ad litem pursuant to section 1-404 to review a report, to interview the incapacitated person or guardian, and to make such other investigation as the court may direct.
- (e) A guardian, without authorization of the court, may not revoke a health care proxy of which the incapacitated person is the principal. If a health care proxy is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.
- (f) No guardian shall be given the authority under this chapter to admit or commit an incapacitated person to a mental health facility or a facility for intellectually disabled persons as defined in the regulations of the department of mental health.
- (g) No guardian shall have the authority to admit an incapacitated person to a nursing facility except upon a specific finding by the court that such admission is in the incapacitated person's best interest.

### **Chapter 190B: Section 5-310. Termination of guardianship for incapacitated person**

The authority and responsibility of a guardian of an incapacitated person terminates upon the death of the guardian or incapacitated person, the determination of incapacity of the guardian, the determination that the person is no longer incapacitated, or upon removal or resignation as provided in section 5-311. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination shall not affect a guardian's liability for prior acts or the obligation to report or account for funds and assets of the incapacitated person.

### **Chapter 190B: Section 5-311. Removal or resignation of guardian; termination of incapacity**

- (a) On petition of the incapacitated person or any person interested in the incapacitated person's welfare, the court, after notice and hearing, may remove a guardian if the person under guardianship is no longer incapacitated or for other good cause. On petition of the guardian, the court, after hearing, may accept a resignation.
- (b) The incapacitated person or any person interested in the welfare of the incapacitated person may petition for an order that the person is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court.
- (c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated or disabled, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a person's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the incapacitated person that apply to a petition for appointment of a guardian.

### **Chapter 190B: Section 5-312. [Reserved.]**

### **Chapter 190B: Section 5-313. Religious freedom of incapacitated person**



It shall be the duty of all guardians appointed under this Article to protect and preserve the incapacitated person's right of freedom of religion and religious practice.

**Chapter 190B: Section 5-401. Management of estate**

(a) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a limited or unlimited conservator or make any other protective order for cause as provided in this section.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money, real property or personal property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be jeopardized or prevented by minority, or that funds are needed for support and education and that protection is necessary or desirable to obtain or provide money.

(c) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person who is disabled for reasons other than minority if the court determines that:

(1) the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance, or because the individual is detained or otherwise unable to return to the United States; and

(2) the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person's support and that protection is necessary or desirable to obtain or provide money.

**Chapter 190B: Section 5-402. Protective proceedings; jurisdiction of business affairs of protected persons**

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated; and

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of the commonwealth shall be managed, expended, or distributed to or for the use of the protected person, the protected person's dependents, or other claimants.

**Chapter 190B: Section 5-403. [Reserved.]**

**Chapter 190B: Section 5-404. Original petition for appointment or protective order**

(a) The person to be protected or any person who is interested in the estate, affairs, or welfare of the person, including a parent, guardian, custodian, or any person who would be adversely affected by lack of effective management of the person's property and business affairs may petition for a determination of disability, in whole or in part, and the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth the petitioner's name, residence address, current street address if different, relationship to the person to be protected, and interest in the appointment or other protective order, and, to the extent known, state the following with respect to the person to be protected and the relief requested:

(1) the name of the person to be protected, his age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the person to be protected will reside if the appointment is made, and the date residence was established;

(2) a brief description of the nature of the alleged incapacity;

(3) if the petition is being brought because the individual is detained or is otherwise unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the detention or inability to return and a description of any search or inquiry concerning the person's whereabouts;

- (4) the name and address of the person's:
  - (A) spouse; and
  - (B) adult children, or if none, parents and adult brothers and sisters, or, if none, heirs apparent or presumptive;
- (5) the name and address of the person who has care or custody of the person or with whom the person has resided during the 60 days, exclusive of any period of hospitalization or institutionalization, preceding the filing of the petition;
- (6) the name and address of any representative payee, trustee or custodian of a trust or custodianship of which the person to be protected is a beneficiary;
- (7) the name and address of any person nominated as conservator by the person to be protected under a durable power of attorney, if known to the petitioner, and the name and address of any guardian or conservator currently acting for him in the commonwealth or elsewhere;
- (8) the name and address of any agent designated under a durable power of attorney of which the person to be protected is the principal, if known to the petitioner, and the petitioner shall attach a copy of any such power of attorney, if available;
- (9) a general statement of the person's property with an estimate of its value, including any insurance, pension, and the source and amount of any anticipated income or receipts;
- (10) the reason why appointment of a conservator or other protective order is in the best interest of the person to be protected;
- (11) a statement:
  - (A) that a medical certificate conforming with the provisions of section 5-303(c) dated within 30 days of the filing of the petition is in the possession of the court or accompanies the petition; or
  - (B) of the nature of any circumstance which makes it impossible to obtain a medical certificate which shall be supported by affidavit or affidavits meeting the requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate.
- (c) If the appointment of a conservator is requested, the petition shall also set forth to the extent known:
  - (1) the name and address of the proposed conservator, his relationship to the person to be protected, the reason why he or she should be selected, and the basis of the claim, if any, for priority for appointment;
  - (2) the name and address of any person nominated as conservator by the person to be protected if 14 or more years of age;
  - (3) the type of conservatorship requested, and if a general conservatorship, the reason why a limited conservatorship is inappropriate, and if a limited conservatorship, the powers to be granted to the limited conservator or property to be placed under the conservator's control; and
- (d) Reasonable expenses incurred in any examination conducted pursuant to this section shall be paid by the petitioner, the estate of the person to be protected, or by the commonwealth as the court may determine.

#### **Chapter 190B: Section 5-405. Notice**

- (a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in section 5-304 apply, but (i) if the person to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the person shall be given by leaving a copy of the petition and citation at the last and usual place of abode of the person to be protected, and (ii) if the person to be protected is a minor, the provisions of section 5-206(b) also apply.
- (b) Notice of hearing on a petition for an order subsequent to appointment of a conservator or other protective order shall be given to the protected person, any conservator of the protected person's estate, and any other person as ordered by the court.

#### **Chapter 190B: Section 5-406. [Reserved.]**

**Chapter 190B: Section 5-407. Findings; order of appointment; permissible court orders**

(a) The court shall exercise the authority conferred in this Part to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's limitations and other conditions warranting the procedure.

(b) Upon hearing, the court may appoint a conservator as requested if it finds that:

- (1) a qualified person seeks appointment;
- (2) venue is proper;
- (3) the required notices have been given;
- (4) any required medical certificate is dated and the examination has taken place within 30 days prior to the hearing;
- (5) the person for whom a conservator is sought is a disabled person;
- (6) the appointment is necessary or desirable as a means of providing continuing care and supervision of the property and business affairs of the person to be protected; and
- (7) the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance.

The court, on appropriate findings, may enter any appropriate order or dismiss the proceedings.

(c) After full hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court, after making appropriate findings of fact, has all those powers over the property and business affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family. Those powers include, but are not limited to, the power to create revocable trusts of the property of the estate which may extend beyond the minority of the minor, provided that:

- (1) the court determines that it is in the best interest of the minor to extend the management and protection of the minor's money and property beyond the minor attaining the age of 18;
- (2) the minor and issue of the minor are the only beneficiaries of the trust during the minor's lifetime;
- (3) upon the termination of the trust during the minor's lifetime, the trust property will be distributed only to the minor;
- (4) the ward, upon attaining the age of 18 shall have the inter vivos and testamentary power to appoint to or among such person or persons and in such proportions and upon such terms, whether outright or in trust or otherwise, all or any part of the property of the trust as the minor may determine;
- (5) upon the death of the minor, to the extent that the minor fails to exercise the power to appoint, the trust will provide that the trust property be distributed to or be held in trust for the benefit of such relatives as would be likely recipients of legacies from the minor as determined by the court pursuant to subsection (e).

After full hearing and upon determining that an amendment, extension, or revocation is in the best interest of the minor, the court may amend, extend, or revoke the trust whether or not the minor has attained the age of 18. The court shall retain jurisdiction over the trust while it continues to exist.

(d) After full hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person to be protected for reasons other than minority, the court, after making appropriate findings of fact, has all those powers over the property and business affairs of the protected person which are or may be necessary for the best interest of the protected person and members of his immediate family. Those powers include, but are not limited to the power to:

- (1) make gifts, except as otherwise provided in section 5-424(b);
- (2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
- (3) exercise or release a power of appointment;
- (4) create a revocable or irrevocable trust of property of the estate, whether the trust does or does not extend beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;

(5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;

(6) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(7) make, amend, or revoke the protected person's will. The conservator, in making, amending, or revoking the protected person's will, shall comply with section 2-502 of this chapter.

(e) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (d), shall consider primarily the decision that the protected person would have made if not disabled, to the extent that the decision can be ascertained. In the absence of any evidence of the personal preference of the protected person, the court shall consider the following factors, and may exercise or approve a conservator's exercise of such powers even in the absence of 1 or more such factors:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support and the interest of creditors;

(2) reduction of income, estate, inheritance, or other tax liabilities;

(3) eligibility for governmental assistance;

(4) the protected person's previous pattern of giving or level of support;

(5) the existing estate plan;

(6) the likely recipients of the protected person's bounty;

(7) the protected person's life expectancy; the probability that the conservatorship will terminate before the protected person's death; and

(8) any other factors the court considers relevant.

(f) A determination that a basis for appointment of a conservator or other protective order exists is not a determination of incapacity of the protected person.

(g) The conservator shall have custody of all wills, codicils and other estate planning documents executed by the protected person.

### **Chapter 190B: Section 5-408. Protective arrangements and single transactions authorized**

(a) Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as described in section 5-401 for affecting the property and business affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of tangible or intangible personal property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust including a trust created under the uniform custodial trust act.

(b) Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as described in section 5-401 for affecting the property and business affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs, including settlement of a claim, if the court determines that the transaction is in the best interest of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the factors listed in section 5-407(e). The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

### **Chapter 190B: Section 5-409. Who may be appointed conservator; penalties**

(a) Subject to subsection (c), the court may appoint an individual or a corporation with general power to serve as trustee or conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

- (1) Unless lack of qualification or other good cause dictates the contrary, a person nominated in the protected person's most recent durable power of attorney;
  - (2) a conservator, guardian of property, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;
  - (3) an individual or corporation nominated by the protected person 14 or more years of age and of sufficient mental capacity to make an intelligent choice;
  - (4) an agent appointed by the protected person under a durable power of attorney;
  - (5) a parent of the protected person, or any parental nominee; and
  - (6) any person deemed appropriate by the court.
- (b) The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having a lower priority or no priority.
- (c) An owner, operator, or employee of a long-term care institution at which the protected person is receiving care or a paid caretaker may not be appointed as conservator unless related to the protected person by blood, marriage, or adoption.

#### **Chapter 190B: Section 5-410. Bond**

- (a) A conservator, temporary conservator and special conservator shall furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office. A surety shall be required on the bond of a conservator, except the court may waive the requirement of sureties for good cause shown by the conservator. A bond with sureties shall be in the amount established by the court.
- (b) Notwithstanding subsection (a), but subject to section 5-415, a conservator shall not be required to furnish sureties on his bond if the conservator has a priority for appointment under section 5-409(a)(1) and the person nominating the conservator expressly waives the requirement.

#### **Chapter 190B: Section 5-411. Terms and Requirements of Bonds**

- (a) The following requirements and provisions apply to any bond required under sections 5-208, 5-305 and 5-410:
- (1) Bonds shall name the first judge of the court making the appointment and his successors as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
  - (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the guardian or conservator and with each other.
  - (3) By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the guardian or conservator and naming the surety as a party respondent. Notice of any proceeding on the bond shall be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.
  - (4) On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the guardian or conservator.
  - (5) The bond of the guardian or conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
  - (6) If a new bond is required, the sureties on the prior bond shall be liable for all breaches of the conditions thereof committed before the new bond is approved and filed.
  - (7) In no event shall any surety be liable for any claim or cause of action arising out of or in any way connected with acts or omissions of the guardian or conservator occurring prior to the appointment of such person as guardian or conservator.
- (b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred.

### **Chapter 190B: Section 5-412. Acceptance of appointment; consent to jurisdiction**

Prior to receiving letters, a conservator, temporary conservator and special conservator shall accept appointment by filing a bond containing a statement of acceptance of the duties of the office. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate which may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address as listed in the petition for appointment or as thereafter reported to the court and to the address as then known to the petitioner.

### **Chapter 190B: Section 5-412A. Emergency orders; temporary conservators**

(a) While a petition for appointment of a conservator or other protective order is pending and after hearing and without notice to others, the court may make orders to preserve and apply the property of the person to be protected as may be required for the support of the person to be protected or his dependents.

(b) While a petition for appointment of a conservator is pending, if a person to be protected has no conservator, and the court finds that following the procedures of this article will likely result in substantial harm to the property, income or entitlements of the person to be protected or those entitled to the person's support occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion the court may appoint a temporary conservator having the powers who may exercise only those powers granted in the order. A motion for appointment of a temporary conservator shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, the actions which will be necessary by the temporary conservator to avoid the occurrence of the harm and the name and address of any attorney in fact designated under a durable power of attorney of which the person to be protected is the principal, and the petitioner shall attach a copy of any such durable power of attorney, if available. Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(c) If an appointed conservator is not effectively performing duties and the court further finds that the welfare of the person to be protected requires immediate action, it may appoint, with or without notice, a special conservator for the protected person having the powers of a general conservator, except as limited in the letters of appointment. The authority of any conservator previously appointed by the court is suspended as long as a special conservator has authority. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(d) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary conservator in hand to the person to be protected and by delivery or by mail to all persons named in the petition for appointment of conservator. A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.

(e) If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary conservator, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the person to be protected as the court may order and post-appointment notice of any appointment is given to the person to be protected and those named in the petition for appointment of conservator stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate, the court shall hear said motion as a de novo matter, as expeditiously as possible. A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment. Upon failure to file such certificate the court may on its own motion vacate said order.

(f) In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.

(g) Appointment of a temporary conservator, with or without notice, is not a determination of a persons incapacity or disability.

(h) The court may remove a temporary or special conservator at any time. A temporary conservator and a special conservator shall make any report the court requires. In other respects the provisions of parts 1, 2, 3 and 4 of this article concerning conservators apply to temporary and special conservators.

### **Chapter 190B: Section 5-413. Compensation and expenses**

If not otherwise compensated for services rendered, any guardian ad litem, attorney, physician, licensed psychologist, clinical team, guardian, special guardian, temporary guardian, conservator, temporary conservator or special conservator appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order, but, if the court later determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate on such terms as the court may order, including, but not limited to, costs, interest and attorney fees. The court may order that such compensation be paid by the petitioner.

### **Chapter 190B: Section 5-414. [Reserved.]**

### **Chapter 190B: Section 5-415. Petitions for orders subsequent to appointment**

(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

- (1) requiring sureties or collateral or additional sureties or collateral, or reducing bond;
- (2) requiring an inventory or accounting for the administration of the trust;
- (3) directing distribution;
- (4) removing the conservator and appointing a temporary or successor conservator; or
- (5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

### **Chapter 190B: Section 5-416. General duty of conservator; plan**

(a) A conservator, in relation to powers conferred by this part, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to trustees as described by chapter 203C.

(b) A conservator shall exercise authority only as necessitated by the mental and adaptive limitations of the protected person, and to the extent possible, encourage the person to participate in decisions, to act in the person's own behalf, and to develop or regain the ability to manage the person's estate and business affairs.

(c) The court may order a conservator to file with the appointing court a plan for managing, expending, and distributing the assets of the protected person's estate. The plan shall be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections for expenses and resources.

(d) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator

and may examine the will and any other donative, nominative, or other appointive instrument of the person.

### **Chapter 190B: Section 5-417. Inventory and records**

(a) Within 90 days after qualification, each conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. The conservator shall provide a copy thereof to the protected person if the person has attained the age of 14 years. A copy also shall be provided to any guardian or parent with whom the protected person resides.

(b) The conservator shall keep suitable records of the administration and exhibit the same on request of any interested person.

### **Chapter 190B: Section 5-418. Accounts**

(a) Each conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator shall account to the court. Subject to appeal or vacation within the time permitted, an order allowing an intermediate account of a conservator adjudicates as to liabilities of the conservator concerning the matters set forth therein or shown thereby; and an order allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

(b) A conservator or any interested person may petition for an order of complete settlement of an account. Notice shall be given in the manner prescribed by section 1-401 by the petitioner to all interested persons.

(c) An account shall state or contain:

(1) a listing of the balance of the prior account or inventory, receipts, disbursements and distributions during the reporting period and the assets of the estate under the conservator's control at the end of the reporting period;

(2) a listing of the services provided to the protected person; and

(3) any recommended changes in any conservatorship plan as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(d) If there are persons interested to whom notice has not been given, or if the interests of persons incapacitated or under disability are not represented except by the accountant, the court shall appoint as guardian ad litem an individual or any public or charitable agency to review the account and make appropriate recommendations to the court.

(e) Objections to a conservator's account shall be filed in the manner prescribed by section 1-401. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the conservator from further claim or demand of any interested person.

(f) The court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' accounts and plans.

### **Chapter 190B: Section 5-419. Conservators; title by appointment**

(a) The appointment of a conservator vests in the conservator title as fiduciary to all property, or to the part thereof specified in the order, of the protected person, held at the time of appointment or thereafter acquired. An order vesting title to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.



(b) Except as otherwise provided herein, the interest of the protected person in property vested in a conservator by this section is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim for restitution or damage.

#### **Chapter 190B: Section 5-420. Recording of conservator's letters**

(a) Letters of conservatorship are evidence of transfer of all assets or the part thereof specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets subjected to the conservatorship from the conservator to the protected person, or to successors of the person.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships, shall be filed or recorded in each registry district in which the protected person owns real property to give record notice of title as between the conservator and the protected person.

#### **Chapter 190B: Section 5-421. Sale, encumbrance, or transaction involving conflict of interest voidable; exceptions**

Any sale or encumbrance to a conservator, the spouse, agent, attorney of a conservator or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.

#### **Chapter 190B: Section 5-422. Persons dealing with conservators; protection**

(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a court order as provided in section 5-407 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator shall not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in section 5-425 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(b) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

#### **Chapter 190B: Section 5-423. Powers of conservator in administration**

(a) Subject to limitation provided in section 5-425, a conservator has all of the powers conferred in this section and any additional powers conferred by law.

(b) A conservator without court authorization or confirmation, may invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation, to

(1) collect, hold, and retain assets of the estate including land in this or another state, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

- (5) invest and reinvest estate assets in accordance with subsection (b);
- (6) deposit estate funds in a state or federally insured financial institution, including one operated by the conservator, not in excess of \$100,000, or such other amount as is protected by federal or state insurance, in any single institution;
- (7) dispose of tangible and intangible personal property for cash or on credit, at public or private sale;
- (8) subject to court approval, acquire estate assets, including land in this or another state at public or private sale, and lease, manage, develop, improve, exchange, change the character of, or abandon an estate asset;
- (9) subject to court approval, make repairs or alterations in buildings or other structures; demolish any structures; and raze existing or erect new party walls or buildings;
- (10) subject to court approval, subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation by giving or receiving considerations; and dedicate easements to public use without consideration;
- (11) subject to court approval, enter for any purpose into a lease as lessor or lessee or renew for a term within or extending beyond the term of the conservatorship;
- (12) subject to court approval, enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (13) subject to court approval, grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;
- (14) vote a security, in person or by general or limited proxy;
- (15) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (16) sell or exercise stock-subscription or conversion rights;
- (17) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (18) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- (19) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
- (20) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, for which the conservator has a lien on the estate as against the protected person for advances so made;
- (21) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
- (22) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (23) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (24) pay any sum distributable to a protected person or individual who is dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:
  - (A) to the guardian of the distributee;
  - (B) to a distributee's custodian under the uniform transfers to minors act or custodial trustee under the uniform custodial trust act; or
  - (C) if there is no guardian, custodian or custodial trustee, to a relative or other person having custody of the distributee;

(25) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation;

(26) commence, prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties;

(27) make funeral and burial arrangements and enter into pre-paid funeral contracts;

(28) resign the office of fiduciary held by the protected or incapacitated or person pursuant to any court appointment or written instrument; and

(29) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(c) A conservator may not sell, mortgage or grant options in real estate, except as provided in chapter 202.

### **Chapter 190B: Section 5-423A. Delegation**

(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the management of investments that a prudent conservator of comparable skills may delegate under similar circumstances.

(b) The conservator shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship; and

(3) periodically reviewing an agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(c) In performing a delegated function, an agent owes a duty to the estate to exercise reasonable care to comply with the terms of the delegation.

(d) A conservator who complies with subsections (a) and (b) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.

(e) By accepting a delegation from a conservator subject to the law of the commonwealth, an agent submits to the jurisdiction of the courts of the commonwealth.

### **Chapter 190B: Section 5-424. Distributive duties and powers of conservator**

(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to section 5-416, a conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and dependents in accordance with the following principles:

(1) The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person or dependent made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations furnishing support, education, or care to the protected person or a dependent pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives undue or disproportionate personal financial benefit therefrom, including relief from any personal duty of support or the recommendations are clearly not in the best interest of the protected person.

(2) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person and dependents with due regard to (i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate; (ii) the accustomed standard of living of the protected person and dependents; and (iii) other funds or sources used for the support of the protected person.

(3) The conservator may expend funds of the estate for the support, funeral expenses and burial expenses of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(5) A conservator, in discharging the responsibilities conferred by court order and this part, shall implement the principles described in section 5-407(a), to the extent possible.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and persons which the protected person has expressed an intent to benefit, in amounts that do not exceed in total for any year 10 per cent of the income from the estate.

(c) When a minor who has not been adjudged disabled under section 5-401(c) attains majority, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.

(d) If satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named therein of the delivery, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If, 40 days after the death of the protected person, no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to be able to proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person nominated personal representative by any will of which the applicant is aware, the court may grant the application upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in section 3-308 and parts 6 to 10, inclusive, of article III, but the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.

### **Chapter 190B: Section 5-425. Enlargement or limitation of powers of conservator**

Subject to the restrictions in section 5-407(c), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred by sections 5-423 and 5-424, any power that the court itself could exercise under sections 5-407(c) and 5-407(d). The court, at the time of appointment or later, may limit the powers of a conservator otherwise conferred by sections 5-423 and 5-424 or previously conferred by the court and may at any time remove or modify any limitation. If the court limits any power conferred on the conservator by section 5-423 or section 5-424, or specifies, as provided in section 5-419(a), that title to some but not all assets of the protected person vest in the conservator, the limitation or specification of assets subject to the conservatorship shall be endorsed upon the letters of appointment.

### **Chapter 190B: Section 5-426. Preservation of estate plan; right to examine**

In (i) investing the estate, (ii) selecting assets of the estate for distribution under subsections (a) and (b) of section 5-424, and (iii) utilizing powers of revocation or withdrawal available for the support of the

protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any estate plan of the protected person known to them, including a will, any revocable trust of which the person is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected person with provisions for payment or transfer of benefits or interests at the person's death to another or others.

### **Chapter 190B: Section 5-427. Claims against protected person**

A conservator may pay or secure from the estate claims against the estate or against the protected person arising before or after the conservatorship.

### **Chapter 190B: Section 5-428. Personal liability of conservator**

(a) Unless otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(b) The conservator is not personally liable unless the conservator is personally at fault for either (i) obligations arising from ownership or control of property of the estate, or (ii) torts committed in the course of administration of the estate.

(c) Claims based on (i) contracts entered into by a conservator in fiduciary capacity, (ii) obligations arising from ownership or control of the estate, or (iii) torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

### **Chapter 190B: Section 5-429. Removal or resignation of conservator; termination of disability; termination of proceedings**

(a) On petition of the protected person or any person interested in the protected person's welfare, the court, after notice and hearing, may remove a conservator if the person under conservatorship is no longer disabled or for other good cause. On petition of the conservator, the court, after hearing, may accept a resignation.

(b) An order adjudicating disability may specify a minimum period, not exceeding 6 months, during which a petition for an adjudication that the protected person is no longer incapacitated may not be filed without special leave. Subject to that restriction, the protected person or any person interested in the welfare of the protected person may petition for an order that the person is no longer disabled and for termination of the conservatorship. A request for an order may also be made informally to the court and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.

(c) Upon removal, resignation, or death of the conservator, or if the conservator is determined to be incapacitated or disabled, the court may appoint a successor conservator and make any other appropriate order. Before appointing a successor conservator, or ordering that a person's disability has terminated, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for appointment of a conservator.

(d) A conservatorship terminates upon the death of the protected person or upon order of the court.

(e) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors. The conservator shall file a final accounting and petition for discharge within 30 days after distribution.

(f) Unless created for reasons other than minority, a conservatorship created for a minor terminates when the protected person attains majority or is emancipated.

(g) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the

assistance or protection of a conservator. Termination of the conservatorship shall not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(h) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final accounting and a petition for discharge upon approval of the final accounting.

(i) The court shall enter a final order of discharge upon the approval of the final accounting and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.

### **Chapter 190B: Section 5-430. Payment of debt and delivery of property to foreign conservator without local proceedings**

(a) Any person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver it to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person upon being presented with proof of appointment and an affidavit made by or on behalf of the fiduciary stating:

- (1) that no protective proceeding relating to the protected person is pending in the commonwealth; and
- (2) that the foreign fiduciary is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in the commonwealth, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

### **Chapter 190B: Section 5-431. Foreign conservator; proof of authority; bond; powers**

(a) If a conservator has not been appointed in the commonwealth and no petition in a protective proceeding is pending in the commonwealth, a conservator appointed in the state in which the protected person resides may file in a court of the commonwealth in a county in which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond. Thereafter, the domiciliary foreign conservator may exercise as to assets in the commonwealth all powers of a conservator appointed in the commonwealth and may maintain actions and proceedings in the commonwealth subject to any conditions imposed upon non-resident parties generally.

(b) If a ward, incapacitated or protected person removes from or resides out of the commonwealth, a guardian or conservator appointed within the commonwealth may transfer and pay over the whole or any part of the personal property of such person to a guardian, conservator, trustee or committee or other official appointed by competent authority in the state or country where such person resides, upon such terms and such manner as the court by which he or she was appointed may, after notice to all parties interested, order upon petition filed therefor.

### **Chapter 190B: Section 5-501. Definition**

(a) A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

(b) References in this part to the disability or incapacity of the principal shall mean the mental illness or other disability of the principal recognized under the General Laws.

**Chapter 190B: Section 5-502. Durable power of attorney not affected by lapse of time, disability or incapacity**

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

**Chapter 190B: Section 5-503. Relation of attorney in fact to court-appointed fiduciary**

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if such principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the conservator, or guardian of the person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. A principal may in a nomination of a conservator or guardian request that sureties on any bond of a conservator or guardian be waived. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

**Chapter 190B: Section 5-504. Power of attorney not revoked until notice**

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

**Chapter 190B: Section 5-505. Proof of continuance of durable and other powers of attorney by affidavit**

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section shall not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

**Chapter 190B: Section 5-506. Enforcement**

The attorney in fact under a durable power of attorney is authorized to prosecute legal action for damages in behalf of the principal in the event of an unreasonable refusal of a third party to honor the authority of a valid durable power of attorney.

**Chapter 190B: Section 5-507. Protection; third parties**

No third party acting in good faith reliance on a durable power of attorney shall be held liable for action taken in such reliance.



## GENERAL LAWS OF MASSACHUSETTS

### Chapter 233: Section 20B. Privileged communications; patients and psychotherapists; exceptions

Section 20B. The following words as used in this section shall have the following meanings:—

“Patient”, a person who, during the course of diagnosis or treatment, communicates with a psychotherapist;

“Psychotherapist”, a person licensed to practice medicine, who devotes a substantial portion of his time to the practice of psychiatry. “Psychotherapist” shall also include a person who is licensed as a psychologist by the board of registration of psychologists; a graduate of, or student enrolled in, a doctoral degree program in psychology at a recognized educational institution as that term is defined in section 118, who is working under the supervision of a licensed psychologist; or a person who is a registered nurse licensed by the board of registration in nursing whose certificate of registration has been endorsed authorizing the practice of professional nursing in an expanded role as a psychiatric nurse mental health clinical specialist, pursuant to the provisions of section eighty B of chapter one hundred and twelve.

“Communications” includes conversations, correspondence, actions and occurrences relating to diagnosis or treatment before, during or after institutionalization, regardless of the patient’s awareness of such conversations, correspondence, actions and occurrences, and any records, memoranda or notes of the foregoing.

Except as hereinafter provided, in any court proceeding and in any proceeding preliminary thereto and in legislative and administrative proceedings, a patient shall have the privilege of refusing to disclose, and of preventing a witness from disclosing, any communication, wherever made, between said patient and a psychotherapist relative to the diagnosis or treatment of the patient’s mental or emotional condition. This privilege shall apply to patients engaged with a psychotherapist in marital therapy, family therapy, or consultation in contemplation of such therapy.

If a patient is incompetent to exercise or waive such privilege, a guardian shall be appointed to act in his behalf under this section. A previously appointed guardian shall be authorized to so act.

Upon the exercise of the privilege granted by this section, the judge or presiding officer shall instruct the jury that no adverse inference may be drawn therefrom.

The privilege granted hereunder shall not apply to any of the following communications:—

(a) If a psychotherapist, in the course of his diagnosis or treatment of the patient, determines that the patient is in need of treatment in a hospital for mental or emotional illness or that there is a threat of imminently dangerous activity by the patient against himself or another person, and on the basis of such determination discloses such communication either for the purpose of placing or retaining the patient in such hospital, provided however that the provisions of this section shall continue in effect after the patient is in said hospital, or placing the patient under arrest or under the supervision of law enforcement authorities.

(b) If a judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient’s mental or emotional condition but not as a confession or admission of guilt.

(c) In any proceeding, except one involving child custody, adoption or adoption consent, in which the patient introduces his mental or emotional condition as an element of his claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between patient and psychotherapist be protected.

(d) In any proceeding after the death of a patient in which his mental or emotional condition is introduced by any party claiming or defending through or as a beneficiary of the patient as an element of the claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between patient and psychotherapist be protected.

(e) In any case involving child custody, adoption or the dispensing with the need for consent to adoption in which, upon a hearing in chambers, the judge, in the exercise of his discretion, determines that the psychotherapist has evidence bearing significantly on the patient's ability to provide suitable care or custody, and that it is more important to the welfare of the child that the communication be disclosed than that the relationship between patient and psychotherapist be protected; provided, however, that in such cases of adoption or the dispensing with the need for consent to adoption, a judge shall determine that the patient has been informed that such communication would not be privileged.

(f) In any proceeding brought by the patient against the psychotherapist, and in any malpractice, criminal or license revocation proceeding, in which disclosure is necessary or relevant to the claim or defense of the psychotherapist.

The provision of information acquired by a psychotherapist relative to the diagnosis or treatment of a patient's emotional condition, to any insurance company, nonprofit hospital service corporation, medical service corporation, or health maintenance organization, or to a board established pursuant to section twelve of chapter one hundred and seventy-six B, pertaining to the administration or provision of benefits, including utilization review or peer review, for expenses arising from the out-patient diagnosis or treatment, or both, of mental or nervous conditions, shall not constitute a waiver or breach of any right to which said patient is otherwise entitled under this section and section thirty-six B of chapter one hundred and twenty-three.

## **GENERAL LAWS OF MASSACHUSETTS**

### **CHAPTER 208. DIVORCE (selected sections)**

#### **Chapter 208: Section 19. Pendency of action for divorce; custody of children**

Section 19. The court may in like manner, upon application of either party or of a next friend in behalf of the minor children of the parties, make such order relative to the care and custody of such children during the pendency of the action for divorce as it may consider expedient and for their benefit.

#### **Chapter 208: Section 20. Continuance of action; temporary separation**

Section 20. The court may, without entering a judgment of divorce, order the action continued upon the docket from time to time, and during such continuance may make orders relative to a temporary separation of the parties, the separate maintenance of either spouse and the custody and support of minor children. Such orders may be changed or annulled as the court may determine, and shall, while they are in force, supersede any order of the probate court under section thirty-two of chapter two hundred and nine and may suspend the right of said court to act under said section. When the court makes an order for maintenance of a spouse or support of a minor child, and such spouse or child is not a member of a private group health insurance plan, the court shall include in such order a provision relating to health insurance, which provision shall be in accordance with section thirty-four.

#### **Chapter 208: Section 28. Children; care, custody and maintenance; child support obligations; provisions for education and health insurance; parents convicted of first degree murder**

Section 28. Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties and may determine with which of the parents the children or any of them shall remain or may award their custody to some third person if it seems expedient or for the benefit of the children. In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines promulgated by the chief justice for administration and management, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice for administration and management or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written

findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree. When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

When a court makes an order for maintenance or support, the court shall determine whether the obligor under such order is responsible for the maintenance or support of any other children of the obligor, even if a court order for such maintenance or support does not exist, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to paid under the current order for maintenance or support.

No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

#### **Chapter 208: Section 28A. Temporary care; custody and maintenance of minor children**

Section 28A. During the pendency of an action seeking a modification of a judgment for divorce, upon motion of either party or of a next friend on behalf of the minor children of the parties and notice to the other party or parties, the court may make temporary orders relative to the care, custody and maintenance of such children. Every order entered relative to care and custody shall include specific findings of fact made by the court which clearly demonstrate the injury, harm or damage that might reasonably be

expected to occur if relief pending a judgment of modification is not granted. An order entered relative to care and custody, pursuant to this section, may only be entered without advance notice if the court finds that an emergency exists, the nature of which requires the court to act before the opposing party or parties can be heard in opposition. In all such cases, such order shall be for a period not to exceed five days and written notice of the issuance of any such order and the reasons therefor shall be given to the opposing party or parties together with notice of the date, time and place that a hearing on the continuation of such order will be held.

**Chapter 208: Section 29. Minor children; foreign divorces, care and custody**

Section 29. If, after a divorce has been adjudged in another jurisdiction, minor children of the marriage are inhabitants of, or residents in this commonwealth, the probate court for the county in which said minors or any of them are inhabitants or residents, upon an action of either parent or of a next friend in behalf of the children, after notice to both parents, shall have the same power to make judgments relative to their care, custody, education and maintenance, and to revise and alter such judgments or make new judgments, as if the divorce had been adjudged in this commonwealth.

**Chapter 208: Section 30. Minor children; removal from commonwealth; prohibition**

Section 30. A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance a probate court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such child, may require security and issue writs and processes to effect the purposes of this and the two preceding sections.

**Chapter 208: Section 31. Custody of children; shared custody plans**

Section 31. For the purposes of this section, the following words shall have the following meaning unless the context requires otherwise:

“Sole legal custody”, one parent shall have the right and responsibility to make major decisions regarding the child’s welfare including matters of education, medical care and emotional, moral and religious development.

“Shared legal custody”, continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care and emotional, moral and religious development.

“Sole physical custody”, a child shall reside with and be under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that such visitation would not be in the best interest of the child.

“Shared physical custody”, a child shall have periods of residing with and being under the supervision of each parent; provided, however, that physical custody shall be shared by the parents in such a way as to assure a child frequent and continued contact with both parents.

In making an order or judgment relative to the custody of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody. When considering the happiness and welfare of the child, the court shall consider whether or not the child’s present or past living conditions adversely affect his physical, mental, moral or emotional health.

Upon the filing of an action in accordance with the provisions of this section, section twenty-eight of this chapter, or section thirty-two of chapter two hundred and nine and until a judgment on the merits is rendered, absent emergency conditions, abuse or neglect, the parents shall have temporary shared legal custody of any minor child of the marriage; provided, however, that the judge may enter an order for temporary sole legal custody for one parent if written findings are made that such shared custody would not be in the best interest of the child. Nothing herein shall be construed to create any presumption of temporary shared physical custody.

In determining whether temporary shared legal custody would not be in the best interest of the child, the court shall consider all relevant facts including, but not limited to, whether any member of the family abuses alcohol or other drugs or has deserted the child and whether the parties have a history of being able and willing to cooperate in matters concerning the child.

If, despite the prior or current issuance of a restraining order against one parent pursuant to chapter two hundred and nine A, the court orders shared legal or physical custody either as a temporary order or at a trial on the merits, the court shall provide written findings to support such shared custody order.

There shall be no presumption either in favor of or against shared legal or physical custody at the time of the trial on the merits, except as provided for in section 31A.

At the trial on the merits, if the issue of custody is contested and either party seeks shared legal or physical custody, the parties, jointly or individually, shall submit to the court at the trial a shared custody implementation plan setting forth the details of shared custody including, but not limited to, the child's education; the child's health care; procedures for resolving disputes between the parties with respect to child-raising decisions and duties; and the periods of time during which each party will have the child reside or visit with him, including holidays and vacations, or the procedure by which such periods of time shall be determined.

At the trial on the merits, the court shall consider the shared custody implementation plans submitted by the parties. The court may issue a shared legal and physical custody order and, in conjunction therewith, may accept the shared custody implementation plan submitted by either party or by the parties jointly or may issue a plan modifying the plan or plans submitted by the parties. The court may also reject the plan and issue a sole legal and physical custody award to either parent. A shared custody implementation plan issued or accepted by the court shall become part of the judgment in the action, together with any other appropriate custody orders and orders regarding the responsibility of the parties for the support of the child.

Provisions regarding shared custody contained in an agreement executed by the parties and submitted to the court for its approval that addresses the details of shared custody shall be deemed to constitute a shared custody implementation plan for purposes of this section.

An award of shared legal or physical custody shall not affect a parent's responsibility for child support. An order of shared custody shall not constitute grounds for modifying a support order absent demonstrated economic impact that is an otherwise sufficient basis warranting modification.

The entry of an order or judgment relative to the custody of minor children shall not negate or impede the ability of the non-custodial parent to have access to the academic, medical, hospital or other health records of the child, as he would have had if the custody order or judgment had not been entered; provided, however, that if a court has issued an order to vacate against the non-custodial parent or an

order prohibiting the non-custodial parent from imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the present or prior address of the child or a party is necessary to ensure the health, safety or welfare of such child or party, the court may order that any part of such record pertaining to such address shall not be disclosed to such non-custodial parent.

Where the parents have reached an agreement providing for the custody of the children, the court may enter an order in accordance with such agreement, unless specific findings are made by the court indicating that such an order would not be in the best interests of the children.

**Chapter 208: Section 31A. Visitation and custody orders; consideration of abuse toward parent or child; best interest of child**

Section 31A. In issuing any temporary or permanent custody order, the probate and family court shall consider evidence of past or present abuse toward a parent or child as a factor contrary to the best interest of the child. For the purposes of this section, “abuse” shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing bodily injury; or (b) placing another in reasonable fear of imminent bodily injury. “Serious incident of abuse” shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing serious bodily injury; (b) placing another in reasonable fear of imminent serious bodily injury; or (c) causing another to engage involuntarily in sexual relations by force, threat or duress. For purposes of this section, “bodily injury” and “serious bodily injury” shall have the same meanings as provided in section 13K of chapter 265.

A probate and family court’s finding, by a preponderance of the evidence, that a pattern or serious incident of abuse has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, “an abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse.

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child’s best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

(a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;

- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;
- (c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;
- (d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;
- (e) ordering the abusive parent to pay the costs of supervised visitation;
- (f) prohibiting overnight visitation;
- (g) requiring a bond from the abusive parent for the return and safety of the child;
- (h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and
- (i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearings.



104 CMR 33.00: DESIGNATION AND APPOINTMENT OF QUALIFIED MENTAL HEALTH PROFESSIONALS

Section

33.01: Legal Authority to Issue

33.02: Authorization to Apply for Hospitalization Pursuant to M.G.L. c. 123, § 12(a)

33.03: Designation of Physicians Pursuant to M.G.L. c. 123, § 12(b)

33.04: Designation of Forensic Psychiatrists and Psychologists

33.05: Denial or Revocation of a Designation or Appointment

33.01: Legal Authority to Issue

The Department is authorized by M.G.L. c. 123, §§ 1 and 2 to promulgate regulations establishing qualifications for the designation and appointment of psychiatrists, psychologists, and psychiatric nurse mental health clinical specialists to perform certain responsibilities pursuant to the provisions of M.G.L. c. 123.

33.02: Authorization to Apply for Hospitalization Pursuant to M.G.L. c.123, § 12(a)

(1) The following persons may perform an examination and apply for hospitalization pursuant to M.G.L. c. 123, § 12(a):

(a) Physician. Any physician who is licensed pursuant to M.G.L. c. 112.

(b) Qualified Psychologist. Licensure pursuant to M.G.L. c. 112, §§ 118 through 129A is required to obtain and maintain status as a Qualified Psychologist.

(c) Qualified Psychiatric Nurse Mental Health Clinical Specialist. Licensure pursuant to M.G.L. c. 112, § 80B and authorization by the Board of Registration in Nursing to practice as a qualified psychiatric nurse mental health clinical specialist is required to obtain and maintain status as a Qualified Psychiatric Nurse Mental Health Clinical Specialist.

(d) Licensed Independent Clinical Social Worker (LICSW). A social worker who is licensed pursuant to M.G.L. c. 112, §§ 130 through 137.

(2) In an emergency, if a physician, Qualified Psychologist, Qualified Psychiatric Nurse Mental Health Clinical Specialist or an LICSW is not available, a police officer may apply for hospitalization pursuant to M.G.L. c. 123, § 12(a).

(3) Application for hospitalization pursuant to M.G.L. c. 123, § 12(a) shall be made upon such form as is prescribed by the Commissioner.

33.03: Designation of Physicians Pursuant to M.G.L. c. 123, § 12(b)

(1) Designated Physicians. A Designated Physician is a physician who satisfies the requirements established by 104 CMR 33.03(1)(b) for purposes of authorizing certain admissions pursuant to M.G.L. c. 123, § 12(b).

(a) A public or private facility which admits patients under M.G.L. c. 123, § 12 may designate a physician on its medical staff who meets the qualifications set forth in 104 CMR 33.03(1)(b) as a Designated Physician to authorize admissions to such facility for up to three days under M.G.L. c. 123, § 12(b).

(b) To be eligible for such designation under 104 CMR 33.03, a physician shall demonstrate an understanding of the legal and clinical requirements for hospitalization under M.G.L. c. 123, § 12(b), and

1. shall be certified or eligible to be certified by the American Board of Psychiatry and Neurology, or shall have had six months accredited residency training in psychiatry, or shall be enrolled in and working at an accredited psychiatry residency training site; and
2. shall be privileged to admit to the facility; and
3. shall be licensed to practice medicine under M.G.L. c. 112.

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(c) Designations shall be made and renewed at such periods of time as may be established by the facility for such medical staff designations.

(d) Authorization for admission pursuant to M.G.L. c. 123, § 12(b) shall be made upon such form as is prescribed by the Commissioner.

(e) Where extenuating circumstances exist, the Commissioner may, after consultation with the Deputy Commissioner for Clinical and Professional Services, from time to time waive the qualification requirements set forth in 104 CMR 33.03(1)(b)1. Requests for waiver shall detail the circumstances justifying such waiver. If the Department grants a waiver, it shall attach such conditions regarding training, experience, supervision, and consultation that it deems necessary to safeguard the admission process pursuant to M.G.L. c. 123, § 12(b).

### 33.04: Designation of Forensic Psychiatrists and Psychologists

(1) Assistant Commissioner or Assistant Commissioner for Forensic Mental Health is the individual, or his or her designee, who has been appointed by the Commissioner of Mental Health as the Assistant Commissioner of the Department of Mental Health with primary responsibility for forensic mental health.

(2) Designated Forensic Psychiatrist. A Designated Forensic Psychiatrist is a psychiatrist who satisfies the requirements established by 104 CMR 33.04(2)(b). A Designated Forensic Psychiatrist shall have authority to conduct examinations and observations and to make reports under the provisions of M.G.L. c. 123, §§ 12(e), 15, 16, 17, 18, and 35.

(a) Designation. Each person who seeks the status of Designated Forensic Psychiatrist shall apply to the Assistant Commissioner for Forensic Mental Health. The designation shall be valid for three years.

(b) Qualifications. The successful applicant shall furnish evidence satisfactory to the Assistant Commissioner that he or she:

1. is licensed to practice medicine under M.G.L. c. 112, § 2; and
2. either:
  - a. is certified or eligible to be certified by the American Board of Psychiatry and Neurology; or
  - b. has completed at least three years of post-graduate medical training, of which two years must be in an accredited psychiatric residency training program; and
3. has completed an approved training visit to Bridgewater State Hospital, a Department of Mental Health facility, a District Court that has Department of Mental Health forensic services, and a County Jail or House of Correction; and
4. has completed a reasonable number of at least two different kinds of forensic evaluations in two different settings as determined by the Assistant Commissioner, under the supervision of and acceptable to a Forensic Mental Health Supervisor; and
5. has successfully completed an examination given by a Forensic Mental Health Supervisor, which must include a standardized written examination and may include an oral examination; and
6. has submitted letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work.

(c) Waiver/Other Designations.

1. Psychiatrists who have extensive previous experience in forensic mental health work may make application to the Assistant Commissioner or his or her designee for waiver of the requirements established in 104 CMR 33.04(2)(b) for designation as a Designated Forensic Psychiatrist. Such psychiatrists must submit samples of forensic evaluations of a quality acceptable to the Assistant Commissioner or his or her designee and must successfully complete a written examination to demonstrate proficiency in forensic

mental health work.

2. Psychiatrists who have met similar criteria for appointment as forensic psychiatrists in other states, or who have completed a fellowship in forensic psychiatry, or who are diplomates of the American Board of Forensic Psychiatry, may apply for, and at the discretion of the Assistant Commissioner be granted, a waiver of the above requirements.

(d) Requirements for Maintaining Status as a Designated Forensic Psychiatrist. To maintain the designation, a Designated Forensic Psychiatrist shall:

1. make available for review by the Assistant Commissioner at all reasonable times copies of forensic mental health reports with identifiers removed that he or she has completed in the capacity of a Designated Forensic Psychiatrist; and
2. participate in periodic reviews of his or her forensic mental health work by a Forensic Mental Health Supervisor; and
3. participate in forensic mental health training programs approved or conducted by the Assistant Commissioner for Forensic Mental Health.

(e) Psychiatric Residents. Psychiatric residents who do not meet the requirements established in 104 CMR 33.03(2)(b) are not eligible to be Designated Forensic Psychiatrists, but they may conduct evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 18, and 35 provided that they are participating in training approved by the Assistant Commissioner. Such training shall include both didactic and supervisory elements.

(3) Designated Forensic Psychologist. A Designated Forensic Psychologist is a psychologist who satisfies the requirements established by 104 CMR 33.04(3)(b) for purposes of conducting certain observations and examinations and preparing certain reports pursuant to M.G.L. c. 123, §§ 12(e), 15, 16, 17, 18, and 35.

(a) Designation. Each person who seeks the status of Designated Forensic Psychologist shall make application therefor to the Assistant Commissioner for Forensic Mental Health. The designation shall be valid for three years.

(b) Qualifications. The successful applicant shall furnish evidence satisfactory to the Assistant Commissioner that he or she:

1. is licensed by the Board of Registration of Psychologists and possesses a doctoral degree; and
2. worked for at least two full-time years post-doctorate as a psychologist doing clinical work, provided, however, that five years of clinical work after completion of a Master's degree in psychology may be substituted for one year of post-doctorate work; and
3. worked at least 1,000 hours, supervised by at least one licensed mental health professional, with psychiatric patients on an inpatient unit which accepts involuntary patients, during internship or thereafter; and
4. completed an approved training visit to Bridgewater State Hospital, a Department of Mental Health inpatient facility, a District Court which has Department of Mental Health forensic services, and a County Jail or House of Correction; and
5. completed at least two different kinds of forensic evaluations in two different settings as determined by the Assistant Commissioner, under the supervision of and acceptable to a Forensic Mental Health Supervisor; and
6. successfully completed an examination given by a Forensic Mental Health Supervisor, which must include a written examination and may include an oral examination; and
7. has submitted letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work.

(c) Waiver/Other Designations. Psychologists who have met similar criteria for appointment as a forensic psychologist in other states, or who are diplomates of the American Board of Forensic Psychology, or who have extensive previous experience in forensic mental health work may, make application to and may at the discretion of the

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Assistant Commissioner be granted a waiver of the above requirements for appointment as a Designated Forensic Psychologist. Such psychologists must submit samples of forensic evaluations of a quality acceptable to the Assistant Commissioner or his or her designee and must successfully complete a written examination to demonstrate proficiency in forensic mental health work.

(d) Requirements for Maintaining Status as a Designated Forensic Psychologist. To maintain the designation, a Designated Forensic Psychologist shall:

1. make available for review by the Assistant Commissioner at all reasonable times copies of forensic mental health reports with identifiers removed that he or she has completed in the capacity of a Designated Forensic Psychologist; and
2. participate in periodic reviews of his or her forensic mental health work by a Forensic Mental Health Supervisor; and
3. participate each year in forensic mental health training programs approved or conducted by the Assistant Commissioner for Forensic Mental Health.

(e) Psychology Fellows. Post-doctoral psychology fellows who do not meet the requirements established in 104 CMR 33.04(3)(b) are not eligible for appointment as Designated Forensic Psychologists, but they may conduct evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 18, and 35 provided that they are participating in training approved by the Assistant Commissioner. Such training shall include both didactic and supervisory elements.

(4) Forensic Mental Health Supervisor. The Assistant Commissioner for Forensic Mental Health shall, from time to time, appoint forensic mental health professionals, on the basis of their experience as evaluators and teachers, or other special contributions in forensic mental health work, as Forensic Mental Health Supervisors. A supervisor must be an experienced forensic mental health professional who is authorized by the Assistant Commissioner for Forensic Mental Health to examine and supervise applicants for appointment as Designated Forensic Psychiatrist and Designated Forensic Psychologist. Except under extraordinary circumstances, Forensic Mental Health Supervisors shall be Designated Forensic Psychiatrists or Designated Forensic Psychologists.

(5) Appointment of Other Physicians and Psychologists for the Examination of Prisoners. The Assistant Commissioner for Forensic Mental Health may, from time to time, appoint physicians and psychologists to examine persons confined in a place of detention as to whether they are in need of hospitalization at a facility or Bridgewater State Hospital, in accordance with M.G.L. c. 123, § 18. These physicians and psychologists shall not be considered qualified to perform other evaluations performed by Designated Forensic Psychiatrists or Designated Forensic Psychologists without meeting the requirements set forth in 104 CMR 33.04(2)(b) or 33.04(3)(b).

(a) In appointing physicians and psychologists for this purpose, the Assistant Commissioner or his or her designee shall consult with the Superintendent of Bridgewater State Hospital to:

1. develop ongoing standards for clinical screening of such persons and for liaison between the place of detention and the facility or Bridgewater State Hospital; and
2. ensure that physicians and psychologists appointed for this purpose are familiar with such standards, and practice in accordance with them.

(b) A physician appointed for this purpose shall be licensed to practice medicine under Massachusetts law; and

1. shall be certified or eligible to be certified by the American Board of Psychiatry and Neurology, or
2. shall have had three years experience in the examination and treatment of mentally ill persons.

(c) A psychologist appointed for this purpose shall be licensed as a psychologist under Massachusetts law and shall have had three years experience in the examination and

treatment of mentally ill persons.

33.05: Denial or Revocation of a Designation or Appointment

(1) Any person designated pursuant to 104 CMR 33.04(2) or (3), who no longer meets the requirements to maintain his or her status, may have the designation or appointment revoked. Written notice of the Department's intent to revoke, stating in general terms the basis for the decision to revoke the designation or appointment, shall be posted by certified mail to the address of record of the person at least ten calendar days prior to the effective date of the revocation.

(2) Any person who seeks a designation pursuant to 104 CMR 33.04(2) or (3) and is denied such designation or who receives such notice of revocation may request a hearing before a designee of the Commissioner no later than 20 calendar days after receipt of said notice. If such a hearing is requested, the designee may suspend a revocation pending the outcome of the hearing. If a revocation is not suspended pending the outcome of the hearing, or if the appeal concerns a denial of a requested designation, the hearing shall commence within 30 calendar days of the effective date of the revocation or denial. To the extent practicable, the Informal/Fair Hearing Rules established in 801 CMR 1.02, *et seq.* shall be used for such hearings. A decision to revoke a designation or to confirm a denial of a requested designation after hearing may be appealed to the Commissioner.

(3) Designation as a Designated Physician with authority to admit to a particular facility is subject to revocation in accordance with the standards and procedures established for medical staff appointments for that facility.

(4) Appointment as a Forensic Mental Health Supervisor pursuant to 104 CMR 33.04(4) and appointment as a physician for specified purposes pursuant to 104 CMR 33.04(5) may be revoked at the discretion of the Assistant Commissioner for Forensic Mental Health.

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### 251 CMR 1.00: ETHICAL STANDARDS, PROFESSIONAL CONDUCT, AND DISCIPLINARY PROCEDURES

#### Section

- 1.01: Initiation
- 1.02: Complaint Committees
- 1.03: Inquiry and Investigation
- 1.04: Request for Response and Response
- 1.05: Investigative Conference
- 1.06: Disposition of Complaints
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- 1.09: Sanctions
- 1.10: Ethical Standards and Professional Conduct
- 1.11: Confidential Communications

#### 1.01: Initiation

Any person, organization, or member of the Board may file a complaint or report or provide information to the Board which charges a licensee with misconduct. Misconduct may include any violation of the standards of ethics and practice listed in 251 CMR 1.10 and 1.11. The Board's complaint form requests the name, address, and telephone number of the party making the filing, and a description of the alleged act(s) which prompted the complaint and must be signed by the party or an authorized representative. The Board, in its discretion, may investigate anonymous complaints.

#### 1.02: Complaint Committees

The Board may establish one or more committees, consisting of two or more members, to review every communication charging a licensee with conduct which violates M.G.L. c. 112, § 61; c. 112, § 128; and/or 251 CMR 1.02.

#### 1.03: Inquiry and Investigation

After receipt and review of a communication, if the Board or a Complaint Committee determines that the communication is lacking in merit, it may file the communication in a general communications file. The Board shall conduct or cause to be conducted any reasonable inquiry or investigation it deems necessary to determine the truth and validity of the allegations set forth in a complaint.

#### 1.04: Request for Response and Response

If the Board or a Complaint Committee determines that a complaint has merit, the Board or Committee may request that the licensee who is the subject of the complaint provide a response to the complaint. A licensee may respond to a request for response either personally or through an attorney. A response must address the substantive allegations set forth in the complaint or request for response and be provided in a timely manner, in accordance with the request of the Board or Complaint Committee.

#### 1.05: Investigative Conference

To facilitate disposition, the Board or Complaint Committee may request any person to attend an investigative conference at any time prior to the commencement of a formal hearing, pursuant to M.G.L. c. 30A, to discuss the complaint and response.

#### 1.06: Disposition of Complaints

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At any point during the course of investigation or inquiry into a complaint, the Board or Complaint Committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a licensee may be sanctioned by the Board. In such event, the Board may dismiss or close its investigation of the complaint and otherwise communicate with the licensee and/or the complainant, as deemed appropriate by the Board.

### 1.07: Board Action Required

If a licensee fails to respond as requested by the Board or a Committee or, if after receiving a response or at any point in the course of investigation or inquiry into a complaint, the Board or Committee determines that there is reason to believe that the alleged acts occurred and constitute a violation for which a licensee may be sanctioned by the Board, the Committee may recommend to the Board or the Board may vote to issue an order to show cause or offer to resolve the complaint by consent agreement or otherwise informally resolve the matter.

### 1.08: Suspension or Refusal to Renew Prior to Hearing

The Board may suspend or refuse to renew a licensee's license pending a hearing on the question of revocation or refusal to renew if the health, safety, or welfare of the public necessitates such summary action. The Board must provide a hearing on the necessity for the summary action within seven days after the suspension or refusal to renew. If such hearing is not held within seven days, the license shall be deemed to have been reinstated.

### 1.09: Sanctions

(1) Sanctions. The Board may, after a hearing in accordance with the provisions of M.G.L. c. 30A, revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline a psychologist licensed under M.G.L. c. 112, §§ 118 through 129A.

(2) Probationary Status. Probationary status may be imposed by the Board. If the Board places a licensee on probation, or if the Board and a licensee consent to the imposition of probationary status, such conditions for continued practice as the Board deems appropriate may be imposed to assure that the licensee is qualified to practice in accordance with accepted professional practice standards including any or all of the following:

- (a) Submission by the licensee to such examinations as the Board may require to determine the licensee's physical or mental condition or professional qualifications;
- (b) The licensee may be required to undergo such therapy and/or complete such courses of training or education as deemed necessary by the Board;
- (c) Supervision of the licensee's practice as necessary to determine and monitor the quality of the professional services rendered and correct deficiencies therein; and
- (d) The imposition of restrictions upon the licensee's practice to assure that practice is in accordance with the licensee's capabilities and area(s) of competency and training.

(3) Supervision of Practice. If the Board orders, or the Board and a licensee consent to the imposition of, supervision of the licensee's continued practice as a psychologist, the following conditions may apply to such supervision:

- (a) A written plan outlining the focus of the supervision must be submitted to the Board. Such plan and supervision should address the areas of practice at issue and should be consistent with the principles contained in the *Ethical Principles of Psychologists and Code of Conduct*.

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- (b) Information (curriculum vitae and professional qualifications) regarding the proposed supervisor must be submitted to the Board for review and approval. Supervisors must be current licensees in good standing with the Board. Supervisors may not be related by blood or marriage to the licensee; have a past or present personal or professional relationship with the licensee; or have any other relationship or affiliation (past or present) with the licensee. A statement from the proposed supervisor attesting to the above must be provided to the Board.
- (c) Supervision which commences prior to the receipt of the Board's written or oral approval of the proposed supervisor will not be credited.
- (d) If the supervisory period is six months or longer, the approved supervisor must submit written reports to the Board on a quarterly basis describing the supervision provided and focusing on those aspects of the supervisory sessions related to the practice areas and ethical principles at issue. If the supervisory period is less than six months, bimonthly reports must be provided to the Board by the approved supervisor.
- (e) At the commencement and completion of the supervisory period, the licensee and approved supervisor may be required to appear before the Board to review and discuss the supervision. All required reports must have been submitted to the Board prior to an appearance before the Board following the completion of the supervision.
- (f) After the Board has received and reviewed all required reports and met with the licensee and the approved supervisor, the Board will determine the appropriateness of allowing the licensee to practice without supervision or to continue practicing under supervision.

### (4) Resignation.

- (a) A licensee who is named in a complaint or who is the subject of an investigation by the Board or who is the defendant in a disciplinary action may, subject to acceptance by the Board, submit his/her resignation by delivering to the Board a written statement that he/she desires to resign, his/her resignation is tendered voluntarily, he/she realizes that resignation is an act which deprives a person of all privileges of registration and is not subject to reconsideration or judicial review, and that the licensee is not currently licensed to practice in any other state or jurisdiction, will make no attempt to gain licensure elsewhere, or will resign any other licenses contemporaneous with his/her resignation in the Commonwealth.
- (b) If a complaint, investigation or order to show cause arises solely out of a disciplinary action in another jurisdiction, within the meaning of 251 CMR 1.10(6)(g), the licensee may submit his/her resignation to the Board, pursuant to 251 CMR 1.09(4), but need not make any representation regarding licensure status in other jurisdictions, nor is prohibited from seeking licensure elsewhere, and need not resign any other licenses contemporaneously with the resignation.

### 1.10: Ethical Standards and Professional Conduct

- (1) The Board adopts as its standard of conduct the *Ethical Principles of Psychologists and Code of Conduct* of the American Psychological Association, except as that code of ethics in any way deviates from the provisions of 251 CMR 1.00 or M.G.L. c. 112, §§ 118 through 129A.
- (2) The Board adopts as official guides, to the extent that they are not inconsistent with the *Ethical Principles of Psychologists and Code of Conduct* referenced in 251 CMR 1.10(1), the following:
  - (a) The *Casebook on Ethical Standards of Psychologists* published by the American Psychological Association;
  - (b) *Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations* published in 1990 by the American Psychological Association; and
  - (c) *AIDS Guidelines*, a 1988 publication of the Inter-Agency Task Force on AIDS Issues, convened by the Office of Consumer Affairs and including members from 18 boards of registration.



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(3) Fees. Predetermined fees may be advertised for routine services such as:

- (a) Diagnostic testing and/or interviewing;
- (b) Therapeutic, supportive, or remedial interviews or sessions;
- (c) Consultation;
- (d) Research; and
- (e) Specialized teaching in a field or subject related to psychology.

All fees will be stated in terms of hourly amounts unless it is a reasonable or common practice to do otherwise, *e.g.*, a fee for a diagnostic evaluation including the administration of a battery of tests; a per diem consulting fee.

A psychologist must specify with each potential patient or client which of the advertised services will be performed for that patient or client, and by whom. A psychologist must perform fully all advertised services at the amounts which they are advertised and must otherwise comply with all representations contained in any advertisement. A psychologist must maintain in a place of prominent display in his or her office the fee schedule appearing in his or her most recent advertisement. If because of unforeseen circumstances a psychologist cannot reasonably charge the advertised amount, the psychologist must so inform all parties directly involved and obtain their written consent prior to performing services at higher than the advertised amount.

(4) Patient Records.

(a) A psychologist shall maintain a record for each patient or client which meets the standards of usual and customary practice and which is adequate to enable the psychologist to provide proper diagnosis and treatment.

A psychologist must maintain a patient or client's record for a minimum period of five years from the date of the last patient or client's encounter and in a manner which permits the former patient or client's or a successor psychologist access to it within the terms of 251 CMR 1.00. In the event that the patient or client is a minor, the psychologist must maintain the patient or client's record for at least one year after the patient or client has reached the age of majority as defined in M.G.L. c. 4, § 7, but in no event shall the record be retained for less than five years.

(b) Except as otherwise provided by law, a psychologist shall permit inspection of records maintained for a patient or client by such patient or client or the authorized representative of the patient or client, and upon request, shall make a copy of such patient or client's record available to such patient or client or representative. If, in the reasonable exercise of professional judgment a psychologist believes that providing the entire record would adversely affect the patient's well-being, the psychologist shall provide a summary of the record to the patient. A psychologist must make the entire record available to the patient's attorney or other psychotherapist designated by the patient, if requested by the patient (M.G.L. c.112, § 12CC).

(c) A psychologist may charge a reasonable fee for the expense of providing the material described in 251 CMR 1.10(4)(b); however, a psychologist may not require prior payment of the charges for such psychological services as a condition for making records available.

(5) In matters pertaining to boundaries and dual and/or sexual relationships, a psychologist's relationship with a patient or client shall be presumed to extend a minimum of two years from the date of the rendering of the last professional service within the definition of the "practice of psychology" appearing in M.G.L. c. 112, § 118.

(6) In addition to acts prohibited by the *Ethical Principles of Psychologists and code of Conduct* referenced in 251 CMR 1.10(1); the ethical standards referenced in 251 CMR 1.10(2); the provisions of 251 CMR 1.10(3) through (5); and the prohibited acts listed in M.G.L. c. 112, §§ 61 and 128; the following acts are deemed to be grounds for disciplinary action, pursuant to M.G.L. c. 112, § 128:

- (a) Use of a false name or impersonating another practitioner.
- (b) Use of status as a licensed psychologist for purposes other than the practice of psychology.

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- (c) Jeopardizing the physical or emotional security of a patient or client by engaging in inappropriate diagnostic or treatment procedures, or by unauthorized disclosure or communication of confidential information. This shall not be interpreted to mean that case history material cannot be used for teaching or research purposes or in textbooks or other literature, provided that proper precautions are taken to conceal the identity of the individual or individuals involved.
- (d) Giving or accepting commissions, rebates, or any form of remuneration of a fee-splitting nature for professional referrals. This does not include or refer to ordinary fees charged directly for services rendered or for time spent in assisting the client or patient to obtain or become knowledgeable about appropriate professional services, schooling, training, or other specialized assistance.
- (e) Failure, without cause, to cooperate with any request by the Board to appear before it and/or provide it with information.
- (f) Sexual misconduct with a patient or client. It shall be a ground for disciplinary action by the Board, pursuant to M.G.L. c. 112, §§ 61 and 128, and the *Ethical Principles of Psychologists and Code of Conduct* referenced in 251 CMR 1.10(1), that a licensee has engaged in sexual misconduct with a patient or client. In the conduct of any investigation or administrative proceeding by the Board, pursuant to M.G.L. c. 30A, where sexual misconduct by a licensee is alleged, the following procedural rules shall govern the conduct of such investigation or proceeding:
  - 1. Consent Defense Not Available. It shall not be a defense that the patient or client consented to such conduct.
  - 2. Sexual Activity Not Admissible. Evidence of the sexual activity of a patient or client, other than sexual activity with the licensee, is not subject to subpoena or other form of discovery, and is not admissible.
  - 3. Confidentiality of Proceedings. Reasonable steps shall be taken to keep confidential the identity of the patient or client, including, but not limited to, closing the hearing to the public during the testimony of the patient or client.
- (g) Having been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, §§ 61 and 128 or 251 CMR 1.10(6).

(7) In determining what sanctions are appropriate regarding a disciplinary matter, the Board will regard lack of adequate professional training and experience for the particular conduct in question as *prima facie* evidence that the unprofessional conduct was engaged in willfully, knowingly, or with gross negligence, and that the conduct in question warrants revocation of the psychologist's license. An application for licensure states the area or areas of the applicant's competence. Applicants who assert competence in a new area or areas shall furnish the Board with information sufficient to support the assertion of competence in a new area. The training shall be in accordance with the *Policy on Training for Psychologists Wishing to Change Their Specialty* published by the American Psychological Association.

### 1.11: Confidential Communications

Except as otherwise provided by law, all communications between a licensed psychologist and the individuals with whom the psychologist engages in the practice of psychology shall be deemed to be and treated as confidential in perpetuity.

(1) Notwithstanding the provisions of M.G.L. c. 112, § 129A(b), information which is acquired by a psychologist pursuant to the professional practice of psychology, whether directly or indirectly, may be disclosed, without client consent, written or otherwise, to another appropriate professional as part of a professional consultation which is designed to enhance the services provided to a client or clients. In disclosing such information, psychologists shall use their best efforts to safeguard the client's privacy by not disclosing the client's name or other identifying

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demographic information, or any other information by which the client might be identified by the consultant, unless such information is, in the psychologist's judgment, necessary for the consultation to be successful.

- (2) (a) The reference to "initiation of the professional relationship" in M.G.L. c. 112, § 129A shall mean that the client must be informed of the limits on confidentiality by the end of the first professional session, unless there are documented substantial clinical reasons for withholding such information and the decision to withhold such information is reviewed and redocumented on a regular basis. If the client has come to the psychologist specifically for psychological evaluation, court ordered evaluation, or psychological testing, the client shall be informed about all confidentiality limitations before said evaluation or testing begins.
- (b) In the event that, before the psychologist has an opportunity to inform the client concerning the limits on confidentiality, a client begins to discuss matters which the psychologist knows, or in the exercise of his/her professional judgment should know, are likely to result in the psychologist's having to reveal confidential information without the client's consent, then the psychologist shall immediately inform the patient of the limits on confidentiality.
- (c) Where the client is an unemancipated minor, the psychologist shall have, in addition to the duties described in 251 CMR 1.11, the duty to inform the client's legal guardian in the event that the psychologist has determined pursuant to M.G.L. c. 112, § 129A(c)(1), (c)(2) or (c)(3), that a nonconsensual disclosure of information is warranted.
- (3) The reference to "clear and present danger" in M.G.L. c. 112, § 129A(c)(1) shall mean that the client presents a clear and present danger to him/herself when:
- (a) the psychologist, in the exercise of his/her professional judgment, believes that the client presents a substantial risk of physical impairment or injury to him/herself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; or
- (b) the psychologist, in the exercise of his/her professional judgment, believes that the client presents a very substantial risk of physical impairment or injury to him/herself as manifested by evidence that such person's judgment is so affected that he or she is unable to protect him/herself in the community and that reasonable provision for his/her protection is not available in the community.
- (4) The reference to "reasonable basis to believe that there is a clear and present danger of physical violence against a clearly identified or reasonably identifiable victim" in M.G.L. c. 112, § 129A(c)(3) shall mean when the psychologist believes, in the exercise of his/her professional judgment, that the patient's words or behavior strongly suggest that there is a reasonable possibility that the client will attempt to kill or inflict serious bodily injury on a reasonably identified victim or victims whom the client's words or behavior or history have clearly identified as a likely target of such behavior.

### REGULATORY AUTHORITY

251 CMR 1.00: M.G.L. c. 13, § 79; c. 112, § 128.

(251 CMR 2.00: RESERVED)

## 251 CMR: BOARD OF REGISTRATION OF PSYCHOLOGISTS

### 251 CMR 3.00: REGISTRATION OF PSYCHOLOGISTS

#### Section

- 3.01: Definitions
- 3.02: Application
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#### 3.01: Definitions

The following definitions shall apply to all of 251 CMR.

The Board, as referred to in 251 CMR 3.00, shall mean The Commonwealth of Massachusetts Board of Registration of Psychologists.

Collaboration shall mean a formal relationship between a qualified collaborator, as provided in 251 CMR 3.05(4) and an individual who has obtained a doctoral degree in psychology.

A Doctoral Degree in Psychology shall mean a doctoral degree in psychology from a program in psychology offered by a department of psychology of a recognized educational institution.

Recognized Educational Institution shall mean a degree-granting college or university which is accredited by a regional board or association of institutions of higher education approved by the Council on Post Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the Commonwealth. Such institutional accreditation shall exist at the time that the doctoral degree is granted or within two years thereafter.

Supervision shall mean a formal relationship between a qualified supervisor, as provided in 251 CMR 3.05(4) and (5), and a trainee engaged in training.

#### 3.02: Application

Applicants for licensure must complete academic, professional experience, and ethical and professional endorsement requirements, in addition to passing licensure and jurisprudence examinations. An application for licensure states the area or areas of the applicant's competence. Applicants who assert competence in a new area or areas post-licensure must be able to furnish the Board with information sufficient to support the assertion of competence in a new area.

- (1) Application fees are not refundable.
- (2) Applications for licensure shall be made on Board-approved forms.

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(3) Applicants will be notified in writing of deficiencies in their applications. If the requested information is not received by the Board within six months of the date of the written notice, the application shall be denied by the Board.

(4) An applicant who fails to fulfill all of the requirements for licensure will have his/her application denied by the Board. An application which is re-submitted following denial by the Board must be accompanied by the current application fee and must meet current licensing requirements.

(5) Applicants who achieve passing scores on the national examination in psychology and jurisprudence examinations are required to submit the required licensing fee to the Board within 90 days of Board notification of licensure eligibility. Failure to pay the licensure fee within six months shall require re-application and payment of an additional application fee.

(6) Applicants for Health Service Provider certification (see 251 CMR 3.08) are required to submit the HSP certification fee within 90 days of Board notification of HSP eligibility. Failure to pay the HSP certification fee within six months shall require re-application and payment of an additional application fee.

### 3.03: Academic Requirements

(1) (a) For Applications Filed Before September 1, 2000:

1. A "Program in psychology" shall mean a psychology program that:
  - a. is accredited by the American Psychological Association at the time the doctoral degree is granted or within two years thereafter; and
  - b. meets the course of studies requirements described in 251 CMR 3.03(1)(a)2.i.
2. If a psychology program is *not* accredited by the American Psychological Association, the following criteria will be used to determine qualification as a "program in psychology" for licensure eligibility:
  - a. Training in psychology is doctoral training offered by a recognized educational institution.
  - b. The psychology program must stand as a recognizable, coherent organizational entity within the institution.
  - c. There must be clear authority and primary responsibility for the core and specialty areas of the program whether or not the program cuts across administrative lines.
  - d. The program must include an organized sequence of study.
  - e. There must be an identifiable psychology faculty and a psychologist responsible for the program.
  - f. The program must have an identifiable body of students who are matriculated in that program for a degree.
  - g. The program must include supervised practica, internship, field or laboratory training appropriate to the practice of psychology.
  - h. The applicant shall complete a course of studies which encompasses a minimum of three academic years of full-time graduate study, or its equivalent, of which a minimum of one academic year of full-time, or its equivalent, academic graduate study in psychology must be completed in residence at the institution granting the doctoral degree. "Completed in residence" shall be determined by the Board based on criteria which includes the following factors: frequency and duration of interactions between faculty and students; opportunities for appropriate and adequate supervision and evaluation; student access to a core psychology faculty whose primary time and

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employment responsibilities are to the institution; and student access to other students matriculated in the program.

i. In addition to receiving instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, and history of psychology, the core program shall require each student to demonstrate competence in each of the following substantive areas:

Biological Bases of Behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

Cognitive - Affective Bases of Behavior: Learning, thinking, motivation, emotion.

Social Bases of Behavior: Social psychology, group processes, organizational and systems theory, issues of social/cultural diversity.

Individual Differences: Personality theory, human development, abnormal psychology.

Effective for Applications Filed after July 1, 1999:

Racial/Ethnic Bases of Behavior with a Focus on People of Color: Cross-cultural psychology, psychology and social oppression, racism and psychology.

All programs in psychology must include course requirements in specialty areas. The dissertation or equivalent, must be psychological in method and content.

Competence in the substantive content areas listed in 251 CMR 3.03(1)(a)2.i. will typically be met by including a minimum of three graduate semester hours (five or more graduate quarter hours) in each of the five substantive content areas.

(b) For Applications Filed After September 1, 2000: A “program in psychology” shall mean a psychology program that:

1. is designated as a doctoral program in psychology by the Association of State and Provincial Psychology Boards at the time the degree is granted or within two years thereafter, and
2. meets the course of studies requirements described in 251 CMR 3.03(1)(a)2.i.

(2) A degree from a foreign educational institution may be accepted by the Board, provided that, in the opinion of the Board:

- (a) the institution meets standards equivalent to those of domestic recognized educational institutions; and
- (b) all other provisions of 251 CMR 3.03 are met.

### 3.04: Professional Experience Requirements

(1) The requirements of M.G.L. c. 112, § 119 for applications for licensure shall not be met unless all of the requirements of 251 CMR 3.04 are satisfied.

(2) Each training experience must be for a period of not less than four months for a minimum of 16 hours per week during which the applicant received no less than one hour of supervision or collaboration per week.

(3) Experience will be credited at a maximum of 16 hours for each hour of acceptable supervision of work involving regularly scheduled, face-to-face, individual supervision with the specific intent of overseeing the services rendered by the trainee, as further described in 251 CMR 3.05.

(4) Experience may not be credited until the applicant has completed one academic year of full-time graduate training in psychology or its equivalent.

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(5) Two years, as used in M.G.L. c. 112, § 119 shall mean not less than 3200 clock hours, which have been completed within 60 consecutive calendar months, unless the Board, in its discretion, determines that additional time is warranted for completing the 3200 clock hours.

(6) Internship or practicum or field placement experience of one year full-time shall fulfill a total of one year pre-doctoral experience or employment if it is at least 1600 clock hours completed in not less than ten calendar months subsequent to the completion of one full academic year of graduate training. Practicum or field placement experience may be pro-rated toward meeting this requirement if each experience is at least four months in length and at least 16 hours per week.

(7) Post-doctoral experience, as used in M.G.L. c. 112, § 119(c), shall mean that qualified experience may be credited from the time the applicant was notified of the completion of all doctoral requirements, provided this date is verified in writing by a responsible academic official. The experience must consist of at least 1600 clock hours, which shall have been completed in not less than ten calendar months and not more than 36 consecutive calendar months from the time of such notification, unless the Board, in its discretion, determines that additional time is warranted for completing the 1600 clock hours.

(8) In the case of academic employment, the term "year" shall mean the number of months usually associated with full-time employment in that institution.

(9) Psychological employment, teaching, research, or professional practice under the supervision of or in collaboration with a licensed psychologist shall fulfill the experience requirement if it is performed competently at a professional level and it is satisfactory in scope and quality. Experience limited to essentially repetitious, routine or clerical tasks at the pre-professional level will not be accepted, *i.e.*, administering and scoring psychological tests, computing statistics by hand or machine, assisting instructor in psychology courses, etc. Satisfactory professional experience includes tasks which depend upon the application of skills, concepts, and principles at a professional level.

Examples include: administering and interpreting psychological tests; providing clients or patients assistance in solving professional or personal problems; designing original research projects; analyzing and reporting on research data; and teaching a psychology course.

(10) Pre- and post-doctoral clinical experience must be completed in positions designated as "psychologist-in-training" (*e.g.*, intern, resident, fellow, *etc.* positions).

### 3.05: Supervision and Collaboration Requirements

(1) The reference in M.G.L. c. 112, § 119(c) to "under the supervision of or in collaboration with a licensed psychologist, or one clearly eligible for licensure" shall not be met unless the applicant has been engaged in a formal relationship with the supervisor or collaborator which provided frequent and regularly scheduled individual or group contacts with the supervisor or collaborator.

(2) Supervision.

(a) Shall be a formal relationship between a qualified supervisor, as provided in 251 CMR 3.05(4) and (5), and a trainee engaged in training.

(b) Supervision shall include a minimum of 200 hours of face-to-face contact at regular intervals, 100 of

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which may be obtained at the pre-doctoral level, but not prior to the completion of one year of full-time, or equivalent part-time, graduate training in psychology or its equivalent.

- (c) Supervision shall occur at least once weekly.
- (d) Face-to-face contacts shall consist of contacts between the supervisor and the individual trainee or groups of not more than three such persons.
- (e) The supervisor shall assess and constructively criticize the work of the trainee.
- (f) The supervisor shall not be reimbursed by the applicant in whole or part, for the supervision provided.
- (g) The supervisor shall be on the premises where the trainee renders service during the time such service is rendered.

### (3) Collaboration.

- (a) Shall be a formal relationship between a qualified collaborator, as provided in 251 CMR 3.05(4) and an individual who has obtained a doctoral degree in psychology or its equivalent.
- (b) Collaboration shall include a minimum of 100 hours of face-to-face contact at regular intervals.
- (c) Collaboration shall occur at least once weekly.
- (d) Face-to-face contacts shall consist of contacts between the qualified collaborator and the individual doctoral degree-holder or groups of not more than three such persons.
- (e) The qualified collaborator shall assess and constructively criticize the work of the doctoral degree holder.
- (f) The collaborator shall not be reimbursed by the applicant, in whole or part, for the collaboration he/she provides.
- (g) The collaborator shall be on the premises where the trainee renders service during the time such service is rendered.

(4) Supervision or collaboration shall be obtained from a licensed psychologist or one clearly eligible for licensure in the opinion of the Board. A psychiatrist who is certified or eligible for certification by the American Board of Psychiatry and Neurology, or a certified member of another psychological specialty approved by the Board, shall be presumed, in the absence of evidence to the contrary, to be "clearly eligible for licensure" within the meaning of 251 CMR 3.05(4).

(5) Supervisors must be regular staff members of, or consultants to, the organization in which the applicant is obtaining required psychological experience.

(6) The applicant must provide to the Board, on the required form, a signed statement from the supervisors or collaborators verifying the applicant's supervised or collaborative experience and setting forth the nature and extent of supervision or collaboration.

(7) Applicants may not substitute their personal, individual or group psychotherapy, or psychoanalysis for their supervised experience.

(8) If the supervision or collaboration is obtained in the private sector, the applicant shall be employed by the person, group or corporation from whom the supervision or collaboration is obtained; and the person, group or corporation that employs the applicant shall have assumed both the legal and professional responsibility for all services provided by the applicant.

### 3.06: Endorsement Requirements



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- (1) An applicant for licensure shall obtain a professional and ethical endorsement from each of three individuals of recognized standing in a psychological field. Endorsement forms are included with Board application forms.
- (2) An applicant must submit at least one endorsement from a psychologist who is licensed by the Board or in the opinion of the Board, one clearly eligible for such licensure, or, an individual licensed or certified as a psychologist by another state with comparable standards.
- (3) Professional and ethical endorsements may also be provided by:
  - (a) A board-certified or board-eligible psychiatrist; or
  - (b) At the discretion of the Board, a member of another psychological specialty who is deemed by the Board to have equivalent professional qualifications.
- (4) In unusual circumstances the Board may, in its discretion, consider endorsements from individuals in other professions whom the Board deems to possess equivalent or appropriate professional qualifications.
- (5) An applicant must submit one endorsement from a training supervisor or other individual having direct knowledge of the applicant's work.
- (6) In no instance shall more than one of the three endorsements submitted by an applicant be supplied by a current member of the Board.

### 3.07: Examinations

- (1) An applicant for licensure shall take a national examination in psychology, the form and content of which is determined by the Board.
- (2) The Board, in its discretion, may, in addition to the national examination in psychology, require a state jurisprudence examination.
- (3)
  - (a)
    1. Effective January 1, 2003, any applicant who has filed an application with the Board prior to January 1, 2003, must take and pass the national examination in psychology by January 1, 2006. If the applicant has not achieved a passing score within these three calendar years, such applicant must re-apply to the Board and meet current licensing requirements.
    2. Effective January 1, 2003, an applicant applying for examination must successfully pass the national examination in psychology within three calendar years from the date of approval for examination by the Board. If the applicant has not achieved a passing score within three calendar years of the date of approval, such applicant must re-apply to the Board and meet current licensing requirements.
  - (b) Each re-examination date must be at least three months from the prior examination date.
  - (c) The national and state examinations may each be taken a maximum of four times per calendar year.
  - (d) Commencing in April 2001, the passing score on the national examination in psychology shall be a scaled score of 500 or higher, or as otherwise determined by the Board.
- (4) At the time of each examination, the applicant must supply a currently valid, government-issued photo ID, and a second form of identification imprinted with the candidate's name and containing a signature, or such other identification required by the Board or its agent. On both forms of identification, the signature must match the

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pre-printed name.

- (5) Failure to appear with proper identification at a scheduled examination will result in the following:
  - (a) the applicant will lose his/her eligibility to take the examination as scheduled; and
  - (b) the applicant will forfeit his/her application and examination fee.
- (6) (a) Application for any required examination will be denied or deferred if in the Board's judgment the applicant lacks the required education and/or experience.
  - (b) If an application for examination is denied, the applicant shall be notified in writing of the Board's action and apprised of the reasons for the Board's action. (See also 251 CMR 3.02)

### 3.08: Certification as a Health Service Provider (HSP)

- (1) The requirements of M.G.L. c. 112, § 120 relating to certification of psychologists as health service providers shall not be met unless all of the requirements of 251 CMR 3.08 are satisfied.
- (2) Eligibility for certification as "Health Service Provider" shall require the applicant to demonstrate a doctoral program which is sufficient to provide education in the practice of psychology, as defined in M.G.L. c.112, § 118. Applicants from doctoral programs which do not meet this requirement shall be required to document the completion of a formal re-specialization program meeting Board approval which includes supervised practica and course requirements in specialty areas.
- (3) The reference to "a site where health services in psychology are normally provided" in M.G.L. c. 112, § 118 shall mean that any training experience for which an applicant seeks credit under M.G.L. c. 112, § 118 must take place in a setting which presents itself to the public as providing health services and where clients usually seek health services.
- (4) (a) The reference to "at least two years of full time supervised health service experience" in M.G.L. c. 112, § 120 shall mean not less than 3200 clock hours which have been completed within 60 consecutive calendar months, 800 of which were spent providing health services directly to clients. Each training experience for which an applicant seeks credit under 251 CMR 3.08 must be at least four months in duration and at least 16 hours per week.
  - (b) The reference to "supervised health service experience" in M.G.L. c. 112, § 118 shall mean that in each of the two years of supervised health service experience, at least half of the supervision must be provided by a licensed psychologist, and in each of the two years of supervised health service experience at least 25% of the applicant's hours must be in direct client contact with clients seeking assessment or treatment.
- (5) The reference to "supervised health service experience" in M.G.L. c. 112, § 120 shall not include the following services: vocational guidance services; industrial or organizational consulting services; teaching; or conducting research. Client contact exclusively for research purposes shall not be admissible to meet this requirement.
- (6) The reference to "health service training program" in M.G.L. c. 112, § 120 shall mean a pre-doctoral internship program or a post doctoral training program which:
  - (a) was approved by the Committee on Accreditation of the American Psychological Association at the time such training was completed or offered by a department holding such pre-doctoral accreditation; and

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(b) meets the training experience requirements described in 251 CMR 3.08(5). Programs which are not accredited by the American Psychological Association must meet the following criteria:

1. The training must occur in an organized training program in contrast to on-the-job training. It must be designed to provide the trainee with a planned, programmed sequence of training experiences. The primary focus and purpose are assuring breadth and quality of training. Those seeking to utilize sites at which they were employed as staff members shall have the responsibility of demonstrating that their program met these criteria;
2. Said training program must have a clearly designated staff psychologist, or one who is clearly eligible for licensure in the opinion of the Board, who is responsible for the integrity and quality of the applicant's training;
3. Supervision must be provided by a staff member of the training agency who carries legal and clinical responsibility for the cases being supervised. At least half of the required supervision hours must be provided by one or more psychologists;
4. The program must provide training in a range of assessment and treatment interventions conducted directly with clients seeking health services;
5. At least 25% of a trainee's time must be in direct contact with clients seeking assessment or treatment (minimum 400 hours);
6. The training experience must include supervision at a minimum ratio of one hour of acceptable supervision per 16 hours of work involving regularly scheduled, formal, face-to-face, individual supervision with the specific intent of overseeing the health services directly rendered by the trainee. The program must also provide at least four additional hours per week in structured learning activities such as: case conferences involving a case in which the trainee was actively involved; seminars dealing with clinical issues; group supervision; or additional individual supervision. The program must also have provided at least four hours (total) in structured learning activities on issues related to racial/ethnic bases of behavior with a focus on people of color.
7. The training must be at a post-clerkship, post-practicum and post-externship level; AND
8. The training experience (minimum 1600 hours) must be successfully completed within 24 months. For applications filed after January 1, 1998, the health service training program year must be the first year of the required two years of full-time supervised health service experience.
9. The training program must have two or more psychologists on the staff as supervisors, two of whom are licensed as psychologists by the relevant state board of examiners of psychologists; however, if the agency in which the training program is based has a professional mental health staff of five persons or less, and said staff includes at least one full-time psychologist, then said training program will qualify if said staff includes either a physician who is a board certified or board eligible in psychiatry or a licensed independent clinical social worker;
10. The training agency must have a minimum of two psychology interns at the internship level of training during an applicant's training period;
11. The trainee must have a title such as "intern," "resident," "fellow," or other designation which clearly indicates his/her training status; and
12. The training program must have a written statement or brochure which describes the goals and content of the training program, stating clear expectations for quantity and quality of trainees' work and which is made available to prospective interns at or; prior to the onset of the training program.

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- (1) Pursuant to M.G.L. c. 112, § 121, upon application therefor, accompanied by required fees, the Board shall issue a license to any person who furnishes, upon a form and in such manner as the Board prescribes, evidence satisfactory to the Board that the person is currently licensed or certified as a psychologist by another state, or another geographical jurisdiction outside the Commonwealth of Massachusetts recognized by the Board, if the requirements for such license or certification are the substantial equivalent of the requirements for licensure under M.G.L. c. 112, § 119.
- (2) The Board will recognize applicants who meet the academic requirements set forth in 251 CMR 3.03(1)(b)1. as meeting the requirements for reciprocity licensure pursuant to M.G.L. c. 112, § 121, who hold the following credentials:
  - (a) A psychologist who holds a diplomate awarded by the American Board of Professional Psychology (ABPP), or
  - (b) A psychologist with a minimum of five years of licensure in good standing from another state or jurisdiction who holds the ASPPB Certificate of Professional Qualification in Psychology (CPQ) from the Association of State and Provincial Psychology Boards.
- (3) The Board will recognize applicants who meet the academic requirements set forth in 251 CMR 3.03(1)(b)1. who hold the following credentials as meeting the requirements for reciprocity licensure and certification as a health service provider pursuant to M.G.L. c. 112, §§ 120 and 121: A psychologist with a minimum of five years of licensure in good standing in another state or jurisdiction who is currently listed in the National Register of Health Service Providers in Psychology.
- (4) All applicants for licensure by reciprocity must achieve a passing score on the psychology jurisprudence exam.

### 3.10: Procedures for Renewal and Reinstatement of a License

- (1) Requirements for Renewal of License. A licensee must renew his/her license every two years. The following are the requirements for renewal of a license:
  - (a) A licensee must submit to the Board a completed renewal application and required fees, prior to the renewal/expiration date of the license; and
  - (b) A licensee must fulfill the continuing education requirements set forth in 251 CMR 4.00.
- (2) Procedures for Renewal of a Lapsed/Expired License.
  - (a) If a licensee fails to meet the requirements for renewal of his/her license, as set forth in 251 CMR 3.10, the license of such person is considered lapsed or expired. A lapsed or expired license is a license not in good standing. A licensee with a lapsed/expired license is not authorized to practice psychology or use the title "psychologist" during the period that the license is lapsed/expired.
  - (b) A licensee who renews his/her license within one renewal cycle (two years) after the date the license lapsed/expired, may apply to the Board for renewal of the license by submitting a completed renewal form, paying all past due renewal and late fees, and presenting evidence satisfactory to the Board of having completed all continuing education credits required by 251 CMR 4.00.
  - (c) A licensee who fails to renew his/her license within one renewal cycle (two years) after the date the license lapsed/expired, may apply to the Board for renewal of his/her license as follows:
    1. If practicing psychology in Massachusetts during the period the license was lapsed/expired:

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- a. A petition for renewal, made under oath and signed before a notary public, must be filed with the Board, which sets forth in detail the licensee's professional activities during the period the licensee has been lapsed/expired;
  - b. Sworn and notarized statements from at least two licensed psychologists who are familiar with the licensee's work and professional history during the period the license has been lapsed/expired must be filed with the Board. Such statements must describe the basis of the affiants' knowledge;
  - c. A completed renewal form and all required past due renewal and late fees must be submitted to the Board;
  - d. Documentation of fulfillment of the continuing education requirements of 251 CMR 4.00 must also be filed with the Board. The number of continuing education hours required to be completed by an applicant for renewal of a lapsed/expired license shall be based on 20 hours per renewal period and determined by the number of renewal periods between the latter of the date the applicant last renewed his/her license or June 30, 1988, and the most recent renewal date prior to the application for renewal;
  - e. An applicant for renewal of a lapsed/expired license may also be required to personally appear before the Board or a subcommittee of its members; and
  - f. An applicant for renewal who has failed to renew his/her license for more than two renewal periods may be required to achieve a passing score on the current national psychology licensing examination and any other examination required for licensure. The Board will not renew the license of an applicant who is required to achieve a passing score on such examination(s) prior to the Board's receipt of official notice that the applicant has achieved a passing score on the required examination(s).
2. If not practicing psychology during the period the license was lapsed/expired:
    - a. a completed renewal form, payment of the application fee, current license fee, and a late fee;
    - b. submission of an affidavit signed under the penalties of perjury attesting that the applicant has not been practicing psychology during the period the license was lapsed/expired;
    - c. presentation of evidence satisfactory to the Board of having completed all continuing education credits required by 251 CMR 3.10 and 4.00;
    - d. where required by the Board, fulfillment of the requirements of 251 CMR 3.10(2)(c)1.f.; and
    - e. where required by the Board, fulfillment of additional supervised experience requirement to demonstrate current clinical competence.
  3. If practicing psychology in a jurisdiction other than the Commonwealth of Massachusetts during the period that the Massachusetts license was lapsed/expired:
    - a. a completed renewal form, payment of the application fee, current license fee, and late fee;
    - b. submission of an official record of standing or certified statement indicating the license is and has been in good standing in the jurisdiction of current licensure; and
    - c. presentation of evidence satisfactory to the Board of having completed all continuing education credits required by 251 CMR 3.10 and 4.00. If the jurisdiction of current licensure has a continuing education requirement, the Board may, in its discretion, waive or modify this requirement.
- (3) Procedures for Reinstatement of a License which has been Revoked, Suspended, Surrendered or Placed on Probation.
- (a) No license which has been revoked, suspended, surrendered or placed on probation will be reinstated or otherwise returned to good standing prior to the licensee's compliance with the requirements of 251 CMR 3.10.

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- (b) A person previously registered by the Board whose license has been revoked, suspended, surrendered or placed on probation, may apply to the Board for reinstatement or return of the license to good standing of his/her license in accordance with the following procedures:
1. A petition for reinstatement made under oath and signed before a notary public setting forth in detail the background of the complaint and/or disciplinary action taken regarding the applicant and the reasons why the license should be reinstated or returned to good standing at that time. The petition must include a detailed summary of the applicant's activities during the period of probation, revocation, suspension or surrender, including, but not limited to, the applicant's professional activities, personal psychotherapy and/or other remediative activities, and academic and other continuing education activities. The petition must also include an outline of the applicant's projected professional plans for the two year period following reinstatement;
  2. Documentation of fulfillment of the continuing education requirements of 251 CMR 4.00, together with documentation of any additional continuing education requirements ordered by the Board, must be filed with the Board;
  3. Documentation of fulfillment of the conditions of any consent agreement or decision and order of the Board (*e.g.* supervision, toxicological testing, psychotherapy, *etc.*) must be filed with the Board.
  4. Sworn and notarized statements from at least three persons (two of whom must be licensed psychologists) who have read the complaint and consent agreement or decision and order of the Board regarding the applicant must be submitted to the Board. Such affidavits must attest to the character of the applicant (including any history of substance abuse), as well as the applicant's work and professional history since the date of probation, revocation, suspension or surrender. Such statements must describe the basis of the affiant's knowledge;
  5. The licensee and any supervising psychologist may be required to make a personal appearance before the Board or a subcommittee of its members may be required; and
  6. An applicant for reinstatement may be required to achieve a passing score on the current national psychology licensure examination and any other examination required for licensure. The Board will not reinstate the license of an applicant who is required to achieve a passing score on such examination(s) prior to the Board's receipt of official notice that the applicant has achieved a passing score on the required examination(s).
- (c) Unless the Board orders otherwise, a person previously registered by the Board:
1. whose license has been revoked, may apply for reinstatement not sooner than three years from the date of revocation (M.G.L. c. 112, § 129);
  2. whose license has been suspended or placed on probation, may apply for reinstatement or return to good standing not sooner than two months prior to the expiration of the period of suspension or probation ordered by the Board and/or consented to by the applicant; and
  3. whose license has been surrendered, may apply for reinstatement not sooner than two months prior to the expiration of the period of surrender consented to by the applicant, or three years if no period is specified.
- (d) If the Board denies a petition for reinstatement, an applicant may not re-petition the Board for reinstatement until at least one year after the date of denial of the petition, unless otherwise ordered by the Board.

### REGULATORY AUTHORITY

251 CMR 3.00: M.G.L. c. 13, § 79.

## 251 CMR: BOARD OF REGISTRATION OF PSYCHOLOGISTS

### 251 CMR 4.00: CONTINUING EDUCATION

#### Section

4.01: Scope, Purpose and Regulatory Authority

4.02: Definitions

4.03: Continuing Education Requirements

4.04: Evaluation and Verification of Continuing Education Hours and Programs

#### 4.01: Scope, Purpose and Regulatory Authority

(1) The purpose of continuing education is to assure high standards for the practice of psychology by requiring licensees to participate in on-going educational activities. Through these experiences, licensees may increase their competence and enhance the knowledge obtained during prior education and training.

(2) The Board promulgates 251 CMR 4.00 pursuant to M.G.L. c. 13, § 79 and M.G.L. c. 112, § 127.

#### 4.02: Definitions

Board: The Board of Registration of Psychologists.

Board-recognized Entities: The American Psychological Association, recognized educational institutions, as defined in M.G.L. c. 112, § 118, and such other entities that the Board designates as appropriate.

Continuing Education Activities: Continuing education activities consist of:

- (a) formal learning programs with specific learning objectives sponsored by Board-recognized entities; and
- (b) publication of books, chapters of books, and/or articles in refereed journals, relevant to the science or practice of psychology.

Continuing Education Hour: The unit of measurement for an organized learning experience lasting 60 consecutive minutes.

#### 4.03: Continuing Education Requirements

(1) All licensees must comply with the requirements of 251 CMR 4.00 to renew their licenses.

(2) All licensees are required, as a condition of license renewal, to complete a minimum of 20 hours of continuing education activities per licensure/renewal period (every two years).

(3) Continuing education activities in the form of publication of books, chapters of books, and/or articles in refereed journals, relevant to the science or practice of psychology may be substituted for not more than ten of the total 20 hours of continuing education activities required per licensure/renewal period.

#### 4.04: Evaluation and Verification of Continuing Education Hours and Programs

(1) At the time of renewal, each licensee will be required to submit a signed, notarized statement, on a form provided by the Board, attesting to completion of the continuing education requirements set forth in 251 CMR

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4.00.

(2) All continuing education activities required for licensure renewal must be clearly psychological in content and/or directly relevant to the science or practice of psychology.

(3) For each continuing education hour earned by participation in formal learning programs, the licensee must be able to document the following information:

- (a) the title of the program;
- (b) the number of hours spent in the program;
- (c) the name of the Board-recognized entity which sponsored the program; and
- (d) the date the program was given.

(4) For each continuing education activity hour earned by publication of books, chapters of books, and/or articles in refereed journals, the licensee must be able to document the following information:

- (a) the title of the book, chapter or article and, in the case of a chapter or article, the title of the book or name of the journal in which it appears;
- (b) the date of publication; and
- (c) the names of any co-authors.

The Board may require the licensee to provide a copy of the book, chapter or article that he/she is relying on as a continuing education activity.

(5) The Board may request the verification enumerated in 251 CMR 4.04(2) and (3) for a period not to exceed two prior licensure/renewal periods.

(6) Board-recognized entities which sponsor approved continuing education programs will be expected to maintain in their records the names of all continuing education attendees and the number of hours awarded for attendance at each program.

(7) Failure to comply with the continuing education requirements of 251 CMR 4.00 will result in the non-renewal of the license.

### REGULATORY AUTHORITY

251 CMR 4.00: M.G.L. c. 13, § 79; c. 112, § 127.