

The Department of Social Services:

Seeking Services, The 51A Investigation, and Consumer Rights During an Investigation

The information provided in this booklet does not constitute legal advice and is based on the laws of Massachusetts as of the publication date. It is always advisable to seek legal advice from an attorney. **A list of resources for low-income people is on the last page.**

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Dictionary of Legal Terms

Included at the end of this booklet (page 17) is a dictionary of legal terms. You will find these terms in *italicized* letters throughout the booklet.

Section 1

Overview and Goals of the Department of Social Services

The protection of children is a very important issue. Laws have been passed to ensure that children live in environments free of abuse and neglect. Sometimes attempts to carry out these laws threaten the rights of parents and families. This pamphlet was prepared to help parents and other care givers understand what their rights are when DSS is investigating them concerning possible abuse or neglect of a child.

It is important to remember that your cooperation with the Department of Social Services is essential to any investigation. However, during an investigation, you have certain rights which will also be discussed in this booklet.

The Department of Social Services (DSS) is the state agency responsible for protecting children and helping troubled families. DSS does the following:

- investigates all reports that a child may be at risk of *abuse or neglect*.
- provides services to children and families found to be in trouble. If you are a family in need, you can ask for DSS services on your own. DSS can also ask you to accept services as a condition of letting your children remain in your home.
- goes to Court to get permission to remove the children from their home if DSS believes that children are at risk of abuse or neglect. The Court can also order parents to accept services as a condition before their children are returned.
- works as a licensed child placement agency and can place children in foster care, either voluntarily or through a Court order.
- arranges for the adoption of children.

There are two simple and related goals of the Department of Social Services. First, DSS seeks to protect children from abuse and neglect. Second, DSS provides services to troubled families so as to protect children from further abuse and neglect.

Dealing with the Department of Social Services

DSS has the very important job of protecting children. Doing that sometimes requires removing children from their parent's home and care. It is important to remember that removal of your children is a possible outcome of all dealings with the Department. You should avoid unnecessarily upsetting DSS. This is a difficult time and tempers may be heightened. You may be angry at what you feel are false accusations and judgments by strangers. You **MUST** remember what the worker is trying to do—protect your children. Also remember what the worker is capable of doing—taking your children. If you don't cooperate with DSS, for example if you miss appointments or don't call back, they may not view you in the most favorable way.

What you say to DSS is not confidential. Anything you say to your worker can be used in a court case. DSS cares about everything that affects your child. They want to know what efforts you are making to deal with the things they think are harmful to your children.

Section 2

How the Department of Social Services Gets Involved with Your Family

The most common way for DSS to get involved with your family is when someone reports that your child is at risk of abuse or neglect. This is called a “51A Report” after the Massachusetts law section. In Massachusetts, anyone can report suspected child abuse and neglect to DSS. There need not be any actual abuse or neglect, just information leading DSS to suspect that a child may be at risk. *Abuse* occurs when a child has been harmed by someone who is caring for the child. *Neglect* occurs when a child is not properly cared for, for example, not fed or clothed adequately. Any person can file a 51A report. Some, such as teachers, daycare workers, doctors, nurses, and social workers are required by law to report suspected abuse or neglect. These people are called *mandated reporters*. Another way for DSS to get involved with your family is for you to voluntarily request their services. You can ask for their help with your family’s problems. No matter how DSS becomes involved with your family, once a report is made, it will begin an investigation. The report must be investigated within 24 hours if it is an emergency, or within 10 days if it is not.

An Open Case Against You

Once DSS begins its investigation of your family, the case will remain open until the report is either *supported* or *unsupported*. A *supported* report means that DSS has found evidence that the report made against you is true or that your children are abused and/or neglected. An *unsupported* report means that DSS has found no evidence of abuse and neglect in your home.

The Department of Social Services’ role is to protect children. However, DSS opens cases in the name of the parent who has custody of the children, the *custodial parent*. If you are a victim of domestic violence, the children can still be labeled as “neglected” if they live in the household where you are also being abused. DSS’ goal is to keep the children safe. Even if the violence is not your fault, and you are a victim too, the report may be made in your name as the *custodial parent*. Hopefully your worker will act to help you and your child at the same time without blaming you for the abuse if you are also a victim. If the report was made in an attempt to further abuse you and is untrue, tell the judge. Often when a judge learns of the abuse, he or she will not give custody to the

abuser. The court will look to the social worker for an opinion as to what custody arrangements are in your child's best interests.

' **Taking Your Children Without Notice of an Open Investigation**

If the report filed against you describes an **emergency**, DSS may present the 51A to a judge and obtain permission to take your children away from you without notifying you beforehand. If this emergency procedure is used, you may not hear about the 51A report until the police come with the social worker to remove your children. If that happens, you should call your local DSS office to find out when then intend to go to court again to get temporary custody of your children. Sometimes, DSS goes to court immediately after taking your children. You have a right to a hearing within 72 hours on the issue of whether your child would be in danger if left with you pending a full hearing on your case. You should go to court at that time. Once you go to court, you may be able to get a court-appointed attorney if you cannot afford one.

' **The Court Hearing**

The Probate and Family Court seeks to protect your children from abuse and neglect. Therefore, the judges job is to see if your children are at risk by remaining in your home. If that possibility exists, the judge may order that your children not be returned to you until after the investigation is complete and services have been provided to your family. If the judge feels that the family environment is too unsafe for your children, he or she may contact DSS to take custody from you. If what has been said about you is untrue, you can ask for five minutes and make an emergency *Motion for Reconsideration* of the decision. This can be used, for example if the person who reported you said that you are an alcoholic and your mother is in the courtroom and can say that you are allergic to alcohol, or that you are rehabilitated and go to AA regularly.

If the judge's decision stands, work with the assigned DSS investigator. The investigator can decide that your child stays in your home, even though DSS has legal custody. DSS can also go back to court as soon as it is discovered that there is no reason for concern and no further reason for them to have custody of your children.

If, however, DSS disagrees with the judge that there are some concerns, it may take some time for you to regain custody of your children. There will most likely be a *family assessment* (discussed below) and a *Service Plan* (also discussed below). Do your best to cooperate with DSS throughout the process.

' **DSS and Criminal Charges**

The Department of Social Services does not file criminal charges, nor do they have

the power to arrest. However, if DSS supports a report of sexual abuse, serious injury, or death, the law requires them to notify the District Attorney. The District Attorney has the authority to file criminal charges for these crimes.

Section 3

Understanding the Investigation

A DSS investigation is controlled by very specific laws and regulations there are things DSS can, cannot and must do. It is important to know these things so that you can be aware of what may or may not happen in your case.

What Happens

The Department of Social Services screens every report of abuse or neglect. If a case is “*screened in*” a social worker will be assigned to investigate the case to see if the report is true or false. If the social worker is absolutely certain that the report is false, it can be “*screened out*.” A report may be *screened out* if the person making the report has a history of constantly making false reports or if the report is about an incident that occurred many years ago, or if it does not involve a caretaker of the children. DSS is required by law, however, to investigate every *screened in* report.

In a non-emergency situation, the first step is for a social worker to come to your home. It is a good idea to have an advocate or friend present. Ask that person to take notes of what happens because you may not be able to remember everything that is discussed. The social worker will want to discuss the allegations, or claims, in the report. The discussion may focus on almost any part of your life including financial difficulties, sexual preference, medical and emotional problems, your children’s medical and emotional problems, your housing situation, and your cultural or racial background. The social worker will want to see the children in your home, particularly the child about whom the report was made. The worker may also want to examine your home. They may want to talk to daycare workers, relatives, doctors, and other people who may know something about you and your children. Any of the information that DSS gathers during their investigation may be used against you in court if DSS decides to seek custody of your children.

Who Filed

The Department of Social Services cannot tell you the name of the person who

reported you. Reports may be made anonymously. Many professionals who come into contact with children through their work, such as doctors, teachers, and day care workers are required by law to contact DSS and file a report if they think a child may have been abused or neglected. These people are called *mandated reporters*.

Although the social worker cannot tell you who made the report, he or she must be as specific as possible in telling you what they have been told. Sometimes you can figure out from that who has made the report. Other times, you cannot. If the person you suspect of making the report may have done so out of anger or spite, you may want to tell the social worker about this. It may help the worker to evaluate the severity of the report. However, remember that **ANYTHING YOU SAY CAN BE USED AGAINST YOU**.

' Access to the Report

You have a right to see a copy of the 51A report and the investigative summary, which is called a *51B Report*. You can send a written request to the DSS Regional Director. Check with your local DSS office for the address of your Regional Director. Make a copy of the request for yourself. You will receive either the report or a written denial of your request along with the reasons for the denial. Keep in mind that it does take some time to obtain a response to your request. If you do receive a copy of the report, the name of the person who reported you will not be on it.

Section 4

Your Rights and Obligations During an Investigation

It is very important that you understand your rights and obligations during an investigation.

Handling the investigation

It is important for you to understand the specific charges noted in the report. You should ask the social worker what charges were in the report. If you do not have someone there to take notes for you, you should be sure to take them yourself or use a tape recorder if you have one available. During the investigation, try to stay on the topic of the specific charges. Sometimes, the social worker will use this visit to find out things that weren't even reported. The social worker may say things that will make you upset. Do not lose your temper or use rough language. Very serious rights are at stake. You do not want the social worker to view you in a negative way.

The worker may want you to sign *releases*. A *release* is a form that is used to give the social worker the authority to talk to certain people about your case. If you choose to sign the release, sign only the completed forms specifying the person that you are authorizing the social worker to talk to and the information that is sought. Make sure that you have copies of everything that you sign. You can request an opportunity to have these items reviewed by an attorney before you sign them and offer to return them to the worker in a few days. It is VERY important that you read over everything carefully. **DO NOT SIGN ANYTHING THAT YOU DO NOT UNDERSTAND.**

Different workers do their job of protecting children differently. Try and have a good working relationship with your worker but remember, this is not a friendship. You may need your worker as a resource in your Probate and Family Court case, for example, to show the court that your abuser should not have custody as your child is afraid of him. DSS takes failing to cooperate VERY seriously. It will not reflect well on you if you cannot get along with your worker. However, if there is a real problem, ask to speak to your worker's supervisor. Be specific about your complaints.

Talking to the Social Worker/Cooperating with the Investigation

While it is important that you cooperate with the investigation once it is begun, you have the right to refuse to participate in the investigation as well as the right to refuse to let the social worker enter your home initially. However, if DSS believes that your child is in immediate danger, they may try to get the courts or the police to help them so that they can see your child. Try to talk to an attorney or an advocate before you decide not to cooperate with DSS. “Non-cooperation” is not looked on in your favor by DSS.

‘ Time Frame for the Investigation

The Department of Social Services must finish its investigation within 10 days of the date of the report. If DSS determines there may be an emergency, a worker will investigate the report within twenty-four hours. When the social worker comes to your home for the first visit, they usually do not stay for more than an hour. Sometimes, however, the visit will take more time.

Section 5

When the Investigation is Complete

When the investigation is complete, DSS will either *support* or *unsupport* the original 51A Report. An *unsupported report* means that the DSS investigator found no evidence that your children were abused or neglected. A *supported report* means that the DSS investigator believes that there is evidence tending to show that your children were abused or neglected or are at risk for being abused or neglected. You should receive a letter telling you whether the report was *supported* or *unsupported*.

What If the Report is Unsupported

If the report is unsupported, the file will be closed and no further action taken.

What If the Report is Supported

If the report is *supported*, DSS may do a number of things:

- ! DSS may offer services to your family.
- ! DSS may ask that you agree to voluntarily place your children in foster care. If the social worker asks you to sign a “*voluntary placement agreement*,” ask for the chance to talk to a lawyer or advocate before you sign.
- ! If you refuse to sign a *voluntary placement agreement*, and if DSS decides that your children are at an immediate risk, DSS may plan to go to court to try to get custody of your children. This is called a “*Care and Protection*” case. You have a right to have an attorney present for this court proceeding, even if you can’t afford one. The court will appoint an attorney for you and a different attorney for your children, sometimes one for each child. The father also gets an attorney. You may want to contact a legal services office about further questions you have about your rights if DSS decides to take you to court. (A Listing of Legal Services agencies is provided at the end of this booklet.)

DSS may start a *Care and Protection* case in court to get custody or may want you to sign an agreement to voluntarily place your children in foster care. However, more often

DSS will begin a *family assessment*.

' **The Family Assessment**

A *family assessment* is used in order to determine if the family needs services and who is best to provide the services to your family. At this stage, the social worker who will handle your case will be assigned. This person will be a different worker than the one who did the investigation. The social worker uses the assessment to get to know you and your family. This is a good time for you to find out what DSS offers and whether you or your family could benefit from those services. The assessment must be completed within forty-five days from the date of the *supported* report. The end result is usually a "*Service Plan*."

' **The Service Plan**

The Department of Social Services is required to provide services to help strengthen troubled families that have been brought to their attention because an abuse or neglect report was *supported*. This is true whether your children remain in your home or are placed in temporary foster care. The services provided under your *Service Plan* may include daycare and homemaker services, counseling for you and your children and parenting skills education.

The *Service Plan* will describe the services that you will receive and will outline what you are expected to do. You **MUST** comply with your *Service Plan* exactly. It is therefore important that you understand what is expected of you. You may want to contact an advocate or lawyer before you sign your *Service Plan*. If there are particular parts of the plan that you find unworkable, discuss this with the worker in a reasonable manner. He or she may agree to a compromise. The time to have this discussion is before the service plan is signed. A *Service Plan* can be used in court to show a judge what you agreed to do and to show what services were offered to you. If you refuse services or are unable to participate in them, DSS may seek either legal or physical custody of your children on the grounds that you failed to accept the necessary services or that you accepted them but failed to do what the service provider expected of you, or that you were uncooperative.

' **Appealing the DSS Decision**

If you disagree with DSS, you can tell your social worker and his or her supervisor about your disagreement. You can also tell the Domestic Violence Specialist if there was domestic violence in your family that was a focus of the investigation. You can also submit a written statement of facts that you think are important and ask that your statement be added to your file. If you dispute a DSS decision, you can appeal it by requesting a “*Fair Hearing*.”

A “*Fair Hearing*” is an opportunity to dispute certain DSS decisions or actions. You can request a *fair hearing*, if, for example:

- ! You want to appeal the *supported* findings of an investigation;
- ! You want to appeal DSS’ record of your name on the “*Registry of Alleged Perpetrators*” as the caretaker who allegedly abused or neglected a child;
- ! You did not receive notice about services that were reduced; or
- ! You think DSS did not follow a regulation which caused you substantial harm.

All other complaints must be appealed through the *grievance process*. For example, you could “grieve” the conduct of a DSS employee. To start a grievance, file a written complaint with the Area Office, Regional Office, Contracted Provider Agency, or Foster Care Review Unit whose decision you have a complaint about. Include any information you wish DSS to consider when reviewing the matter. A written notice of the decision will be sent to you within twenty-one days.

' **Getting a Fair Hearing**

If you wish to request a *Fair Hearing*, you must file a **written request** with the DSS Fair Hearing Office **within thirty calendar days** of the decision with which you disagree. The request should include your name, address, phone number, name of your child, the name and address of the DSS office, the decision you want to appeal, and the date of the decision. You must also send a copy of your request to the area director of the DSS office where the decision was made. Keep a copy of the request for yourself.

The DSS “*Ombudsman’s Office*” is set up to serve clients and foster and adoptive parents who feel they have not been treated fairly by DSS. It is for people who have tried to resolve

a conflict at the Area Office and are still dissatisfied. Staff at the Ombudsman's Office can mediate disputes. Their phone number is (617) 727-0900.

Section 6

Additional Considerations

Sometimes there are other things you need to think about during the investigation which may or may not be why DSS is involved.

Restraining Orders

DSS workers are trained to understand Domestic Violence. Your worker may recommend that you get a *Restraining Order* also called a 209A Protective Order against your abuser if you are also a victim of abuse. You can seek a restraining order if you and the person you are seeking the order against:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) have a child in common regardless of whether they have ever married or lived together;
- (e) are or have been in a substantive dating or engagement relationship.

In order to obtain a restraining order from a judge the other person must have caused you physical harm or attempted to cause you physical harm; OR placed you in fear of imminent serious physical harm; OR caused you to engage involuntarily in sexual relations by force, threat or duress.

If your worker is insisting on something that will make you unsafe, explain this to him or her, the worker's supervisor, or a Domestic Violence Specialist. Tell the judge that DSS asked you to get a *restraining order*. The judge may not grant the order if it was not your idea and if you disagree with getting the order. Ultimately the decision to seek a *restraining order* is up to you.

Counseling

DSS may want you to seek counseling. They may suggest that you join a support group. It may be helpful for you to talk to others about what goes on in your home. Going to a mental health counselor does not mean that you are "crazy." It is not bad to have someone to talk to about things that have gone on in your relationship. It is more appropriate to "vent" to your therapist than to a DSS worker. Remember, however, that the therapist will generally be reporting to DSS and to the court. The normal "*privilege of*

confidentiality’ does not apply in a child custody matter. Therapists are also *mandated reporters* which means that they have to tell DSS if they think that your child is at risk based on things that you reveal in counseling, for example if you say that your boyfriend is hitting your children.

Leaving Your Abuser vs. Losing Your Children

DSS may tell you that if you go back to your abuser, they will take your children away. If DSS is wrong in their judgement and your boyfriend/husband is not a danger to you or your children, try to show them their mistake. If you cannot convince DSS to change its position, you have a difficult decision to make. If you go back with the person that DSS thinks is bad for your children, they may ask the court to give them custody of your children. Ultimately it is up to the judge to decide who gets custody of your children, however having DSS against you makes it difficult for you to win.

Considerations for Victims of Domestic Abuse

Abusers may sometimes retaliate by threatening to call, or actually calling DSS and filing a report about you. For example, your abuser may call DSS and tell them that you are neglectful with your children or that you are an alcoholic. He may not be aware of the trouble that he is making for himself. When DSS finds out his claims are not true, they can learn about his abuse from the investigation as well. It is best to cooperate with DSS under these circumstances. Let your abuser be the one not to cooperate when a social worker wants to visit their home, make an appointment, or give them a service plan. If you have been reported by an abuser out of anger or spite, tell the worker what he has done. Try and be as calm and think as organized as possible. Try to have a friend or advocate with you. DSS may first think that the situation is one of “he said, she said” but you can provide them with evidence that the report may be untrue. Ask to speak with a DSS Domestic Violence Specialist. Understand that if DSS learns about the violence and abuse, they will want to deal with it.

We hope this information is helpful to you. Please consult the last pages for a list of resources for low-income people and a list of other publications available in this series.

Dictionary of Terms

51A Report: A report of abuse or neglect made to the Department of Social Services. Named after the Massachusetts Law Chapter.

51B Report: The summary of the investigation resulting from the original 51A Report.

Abuse: The statute defines abuse as the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear or imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat, or duress. Family or household members are persons who: (a) are or were married to one another; (b) are or were residing together in the same house; (c) are or were related by blood or marriage; (d) have a child in common regardless of whether they were ever married or lived together; (e) are or have been in a substantive dating or engagement relationship.

Care and Protection Case: Court case whereby the Department of Social Services seeks to gain custody of your child(ren) for their safety.

Custodial Parent: The parent that has physical custody of the children.

Fair Hearing: Hearing during which grievances with DSS decisions can be heard.

Family Assessment: Evaluation whereby a social worker gets to know your family and evaluates what services are needed and could benefit your family.

Grievance Process: Procedure for sorting out problems and disagreements with the Department of Social Services.

Mandated Reporter: Someone who MUST, under law, report suspected abuse or neglect.

Motion for Reconsideration: A written request to the court, after a decision has been made, to hear different evidence and re-evaluate the decision.

Neglect: When a child is not properly cared for, such as inadequate food, clothing, or shelter.

Ombudsman's Office: Office of last resort when all other grievance procedures have failed.

Privilege of Confidentiality: Normally, conversations between therapists and patients are

confidential; what they say to each other cannot be discussed with anyone else. In custody cases, conversations with a therapist are not private and the things discussed can be used against you in court.

Registry of Alleged Perpetrators: Listing of people who have been found to perpetrate abuse or neglect upon their children.

Release: A form that you sign to authorize the social worker or someone else to talk with specific people about specific things relevant to the investigation of abuse or neglect.

Restraining Order: also known as a 209A Protective Order: A court order that restricts another person from abusing you, contacting you, or harassing you.

Screened In: If a report is screened in, it means that a social worker will be assigned to investigate the report.

Screened Out: A screened out report is one that will not be investigated because the social worker is absolutely certain that the report is false or does not involve a caretaker.

Service Plan: Document and plan describing exactly what DSS wants you to do.

Supported Report: A report is supported if DSS has found evidence that the report made against you is true and the child(ren) are being abused or neglected.

Unsupported Report: An unsupported report means that DSS has found no evidence of abuse or neglect in your home.

Voluntary Placement Agreement: An agreement whereby you agree to voluntarily place your child(ren) in foster care.

Helpful Phone Numbers

Lawyer-for-the-Day

Provides free assistance at the Courthouse in preparing forms and documents

Salem Division
36 Federal Street, Salem, MA 01970
Call the court at (978) 744-1020

*Monday, Tuesday, Wednesday
and Thursday mornings*

Lawrence Division
Fenton Judicial Center, 2nd Floor
2 Appleton Street, Lawrence, MA 01840
Call the clerk's office at (978) 686-9692

No regular schedule.

Legal Services

Provides free legal services for those who are income eligible.

Neighborhood Legal Services, Inc.
37 Friend St., Lynn, MA 01902
(781) 599-7730

*Provides direct representation, Pro Se
Divorce Clinic, and Helpline advice
to Southern Essex County*

Merrimack Valley Legal Services, Inc.
11 Lawrence St., Lawrence, MA 01840
(978) 687-1177

*Provides family law services to
Northern Essex County*

Reduced Fee Lawyer Referral Programs

Provides referrals to lawyers who charge reduced fees. Call for eligibility requirements:

Boston Bar Association (*Greater Boston*)
16 Beacon St., Boston, MA 02108
(617) 742-0625, (800) 392-6164

Mass. Bar Association (*statewide*)
20 West St., Boston, MA 02111
(617) 542-9103

National Lawyer's Guild
14 Beacon Street, Suite 407
Boston, MA 02108
(617) 227-7008

Essex County Bar Association
36 Federal Street
Salem, MA
(978) 741-7888

The Child Support Enforcement Division (CSE) of the Department of Revenue (DOR)

Provides assistance in establishing paternity and collecting child support.

Essex Division
36 Federal Street
Salem, MA 01970
(978) 744-1020

Lawrence Division
Fenton Judicial Center, 2nd Fl.
2 Appleton St., Lawrence, MA 01840
(978) 686-9692 (*open only Mon. & Wed. 8-1*)

Essex County Probate and Family Court, Pamela Casey O'Brien, Register

Salem Division
36 Federal St., Salem, MA 01970
(978) 744-1020

Lawrence Division
Fenton Judicial Center, 2nd Fl.
2 Appleton St., Lawrence, MA 01840
(978) 686-9692

The Family Law How-to Series includes:

Copies of these booklets are available at the Lawyer for the Day office and Legal Services programs listed inside this booklet.

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- The Process of Exchanging Information in Family and Probate Court
 - Divorce and the Alternatives
 - The Department of Social Services: Seeking Services, the 51A Investigation and Consumer Rights During an Investigation
 - Name Changes
 - Grandparent Visitation
 - How to Get Child Support
 - What Is Best for Your Child: Working Through Child Custody and Visitation Issues
 - Information About How to File Papers in Essex Probate and Family Court
 - How to Fill Out a Financial Statement
-