# HOUSE . . . . . No. 6128

## The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 16, 1988.

The committee on Bills in the Third Reading, to whom was referred the Bill further regulating the reporting and investigation of certain cases of child abuse (House, No. 2491, changed), reports recommending that the same be amended by the substitution of the accompanying bill (House, No. 6128).

For the committee,

DAVID B. COHEN.

# The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT FURTHER REGULATING THE REPORTING AND INVESTIGATION OF CERTAIN CASES OF CHILD ABUSE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 51A of chapter 119 of the General Laws,
2 as appearing in the 1986 Official Edition, is hereby amended by
3 inserting after the word "suffering", in line 13, the words: — or
4 may be suffering.

1 SECTION 2. Clause (1) of section 51B of said chapter 119, as
2 so appearing, is hereby amended by inserting after the fourth
3 sentence the following sentence: — If the department determines
4 that the assistance of a multi-disciplinary team, established
5 pursuant to the provisions of section fifty-one D, is necessary to
6 said investigation and evaluation of a report received under
7 section fifty-one A, the department may request the assistance of
8 said team.

1 SECTION 3. Said section 51B of said chapter 119, as so
2 appearing, is hereby further amended by striking out clause (2)
3 and inserting in place thereof the following clause: —
4 (2) evaluate the household of the child named in the report and
5 make a written determination of the risk of physical or emotional
6 injury to any other children in the same household. Such
7 evaluation or subsequent assessment shall indicate whether there
8 has been a history of alcohol or drug abuse and whether the child
9 or other children in the household have been the subject of
10 previous reports made under section fifty-one A.

1 SECTION 4. Said section 51B of said chapter 119, as so
2 appearing, is hereby amended by striking out clause (4) and
3 inserting in place thereof the following clause: —

4 (4) notify in writing the district attorney for the county in which
5 the abuse or neglect occurred, or if such county is not known,
6 the county in which the child resides or the appropriate federal
7 authority if the incident to be reported occurred on federal
8 property by transmitting to such district attorney or appropriate
9 federal authority a copy of the report required under section fifty-
10 one A and this section if, after an investigation and evaluation
11 undertaken pursuant to clause (1), the department has reasonable
12 cause to believe that any of the following conditions has resulted
13 from abuse or neglect:
14 (a) a child has died;
15 (b) a child has been sexually assaulted, as set forth in sections
16 thirteen B, thirteen H, twenty-two, twenty-two A, twenty-three,
17 twenty-four, and twenty-four B of chapter two hundred and sixty-
18 five or section thirty-five A of chapter two hundred and seventy-
19 two;
20 (c) a child has suffered brain damage, loss or substantial
21 impairment of a bodily function or organ, or substantial
22 disfigurement;
23 (d) a child has been sexually exploited, which shall mean
24 encouraging a child to engage in prostitution as defined in sections
25 four A and four B of chapter two hundred and seventy-two or
26 in the obscene or pornographic photographing, filming, or
27 depicting of a child as defined in section twenty-nine A of chapter
28 two hundred and seventy-two; or
29 (e) a child has suffered serious bodily injury as the result of a
30 pattern of repetitive actions by a family member.
31 The department shall within forty-five days after making such
32 notification further notify the district attorney or appropriate
33 federal authority of the service plan, if any, developed for such
34 child and his family. The department may further notify the
35 appropriate district attorney or appropriate federal authority of
36 other matters involving serious abuse or neglect of children. No
37 provision of chapter sixty-six A, section one hundred and thirty-
38 five of chapter one hundred and twelve, and section fifty-one E
39 and fifty-one F of this chapter relating to confidential date or
40 confidential communications shall prohibit the department from
41 (i) making any notifications pursuant to this clause or from
42 providing to the district attorney or appropriate federal authority

any information obtained pursuant to clause (1) or furnished pursuant to this clause, or (ii) providing, at the request of a district attorney or appropriate federal authority, any additional information about any case for which notification has been made pursuant to this clause. No person providing notification or information to a district attorney or appropriate federal authority pursuant to the provisions of this clause shall be liable in any civil or criminal action by reason of such action. Nothing herein shall be construed to limit the prosecutorial power of a district attorney or appropriate federal authority.

SECTION 5. Said section 51B of said chapter 119, as so appearing, is hereby further amended by striking out clause (8) and inserting in place thereof the following clause: —

(8) promulgate regulations to implement the provisions of sections fifty-one to fifty-one I, inclusive.

SECTION 6. Said chapter 119 is hereby further amended by striking out section 51D, as so appearing, and inserting in place thereof the following section: —

Section 51D. Each regional director of the department shall be responsible for implementing the provisions of clause (4) of section fifty-one B. Each such regional director shall report to the appropriate district attorney cases as provided for in said clause (4). Each area director shall assist the regional director in implementing the provisions of this section.

Each regional director shall establish in cooperation with the appropriate district attorney at least two permanent multi-disciplinary teams. Such teams shall consist of one representative of the department who shall be the caseworker for the particular case and one member who shall be the investigative law enforcement officer for the particular case. In the case of a reported abuse or neglect alleged to have occurred at a facility subject to licensure by the office for children under the provisions of section ten of chapter twenty-eight A, a representative of the office for children shall be a member of the team. Such teams shall additionally consist of not less than five permanent members. At least one permanent member shall be a physician preferably hospital-based or nurse practitioner with expertise in child sexual

23 or physical abuse treatment methods; at least one permanent
24 member shall be a mental health professional with special clinical
25 expertise and experience in the evaluation and treatment of child
26 sexual and physical abuse; at least one permanent member shall
27 be a mental health professional employed by or under contract
28 with the department of mental health, serving the particular
29 region; and at least one permanent member shall have training
30 and experience in the field of child welfare or in the field of
31 criminal justice.
32 Such teams shall, upon request of the regional director, assist
33 the department in conducting the investigation, evaluation or
34 assessment required by section fifty-one B. Such a team may
35 review the service plan developed by the department pursuant to
36 said section fifty-one B. When such team elects to review such
37 service plan, such team shall evaluate such service plan in regard
38 to its effectiveness in protecting the child from further abuse or
39 neglect and such team shall make recommendations regarding
40 amendments to the service plan. If such team reviews the service
41 plan and finds that the services required under such plan are not
42 actually provided to such family, the case shall be referred to the
43 appropriate office for children area office for assistance in
44 ensuring that the services recommended by the service plan are
45 provided. Said area offices may, in their discretion, further refer
46 such cases to the interagency children's services team established
47 pursuant to section six A of chapter twenty-eight A. The multi-
48 disciplinary teams shall also make recommendations regarding
49 the advisability of prosecuting members of the family, and the
50 possibility of utilizing diversionary alternatives.
51 Notwithstanding the provisions of chapter sixty-six A, section
52 one hundred and thirty-five of chapter one hundred and twelve,
53 and sections fifty-one E and fifty-one F of this chapter, (a) such
54 a multi-disciplinary service team shall have full access to such
55 service plan and any personal data known to the department
56 which relates to the implementation of such plan; and (b) when
57 the regional director requests such teams to assist the department
58 in conducting the investigation, evaluation or assessment required
59 by section fifty-one B, the team shall have full access to personal
60 data known to the department which related to such investigation,
61 evaluation or assessment. The multi-disciplinary team, may report

62 to such district attorney the information that the family has failed
63 to participate in or carry out the terms of such plan.
64 Each such regional director shall file a monthly report with the
65 commissioner of the department regarding the activities in the
66 region which have occurred in the previous month pursuant to
67 this section. Such report shall be written on a form prescribed by
68 said commissioner and shall include, but not be limited to, the
69 number of cases reported pursuant to clause (4) of said section
70 fifty-one B, the activities of the multi-disciplinary service teams,
71 the availability of services which are by such service plan, and after
72 obtaining the information from the appropriate district attorney,
73 shall reflect the number of family members that are the subject
74 of such reports that have been prosecuted. Said commissioner,
75 after deleting all personal identifying information, shall combine
76 these regional reports into one monthly report which shall be filed
77 with the secretary of human services, each district attorney, the
78 joint committee on human services and elderly affairs, and the
79 house and senate committees on ways and means.

1 SECTION 7. Section fifty-one G of said chapter one hundred
2 and nineteen is hereby repealed.

1 SECTION 8. Said chapter 119 is hereby further amended by
2 inserting after section 51G the following two sections: —
3 Section 51H. When a defendant in any criminal proceeding
4 seeks discovery of information contained in records maintained
5 by the department pursuant to this chapter, the defendant shall
6 subpoena the records from the department into court. The judge
7 shall hold an in-camera hearing and examine the records to
8 determine what information shall be released to the defendant.
9 The defense counsel or district attorney shall not be entitled to
10 examine or review said records, except those records released to
11 the defendant by the judge. A representative of the department
12 may be present at this hearing. The judge shall only order the
13 release of statements made by the defendant and any material
14 information. The judge's order shall be in writing and shall clearly
15 identify the information, if any, which shall be released to the
16 defendant. The department shall provide the district attorney with
17 a copy of any information released to the defendant pursuant to

18 such order. The provisions of clause (k) of section two of chapter
19 sixty-six A shall not apply to the department's response to a
20 subpoena for its records issued pursuant to this section, nor to
21 the release by the department of any information pursuant to an
22 order issued by a judge under this section.

23 Section 51I. Notwithstanding any other provision of law to the
24 contrary the department may send to any other state and may
25 receive from any other state a protective alert or communication
26 containing any information about a child and his caretaker when
27 the child is the subject of a substantiated report of abuse or neglect
28 and the department has reason to believe the child has been
29 transported or will be transported into another state.

30 For purposes of this section, a "caretaker" shall mean a child's
31 parent, stepparent, guardian, any other household member
32 entrusted with the responsibility for a child's health or welfare and
33 any other person interested with the responsibility for a child's
34 health and welfare.