

By Ms. Hildt of Amesbury, petition of Barbara Hildt, Augusto F. Grace, Carmen D. Buell, Salvatore F. DiMasi, Joseph K. Mackey and Paul Kollios that provision be made for supportive and rehabilitative services and other assistance to certain children. Human Services and Elderly Affairs.

**The Commonwealth of Massachusetts**

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

AN ACT TO IMPROVE THE PROTECTION AND CARE OF CHILDREN.

*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 21 of Chapter 119 of the General Laws  
2 as most recently amended by section 28 of Chapter 552 of the Acts  
3 of 1978, is hereby amended by adding the following sentences: —

4 “Reasonable efforts”, means the affirmative exercise of due  
5 diligence and care by the department or its agent to provide  
6 assistance or services designed to meet the specific needs of a child  
7 and his family and which would have substantial likelihood of  
8 protecting the child from harm so that the child is able to remain  
9 in the family unit; enabling a child who has been placed in  
10 substitute care to return home at the earliest possible date; or  
11 reducing the likelihood that a child who has been discharged from  
12 substitute care would return to such care. Reasonable efforts shall  
13 include but are not limited to:

14 (1) consultation and cooperation with parents in developing a  
15 focused casework plan for appropriate services for the child and  
16 his family;

17 (2) the provisions of supportive and rehabilitative services and  
18 other assistance to a child and his family, including but not limited  
19 to individual or group counseling, referral to local self-help parent  
20 group, homemaker or parent aid services, respite care, intensive  
21 home-based services, day care or babysitting services or parent  
22 skills training; and

23 (3) when a child is in substitute care, making suitable

24 arrangements for the parents to visit the child and informing the  
25 parents at appropriate intervals of the child's progress,  
26 development and health.

27 When the department's first contact with a family occurs during  
28 an emergency in which no preventive services could ensure the  
29 safety of a child, the department shall be deemed to have made  
30 reasonable efforts to prevent the need for removal. The  
31 department shall have the burden of proving reasonable efforts.

1 SECTION 2. Section 23 of chapter 119 of the General Laws,  
2 as most recently amended by section 10 of chapter 310 of the Acts  
3 of 1986, is hereby amended by inserting after the second sentence  
4 of paragraph (c), the following sentences: — Such order shall not  
5 be made by a probate court unless the department establishes that  
6 there are no reasonable means by which the child can be protected  
7 while remaining in the physical custody of parent(s), guardian,  
8 or other custodian. The order shall also include a determination  
9 as to whether the department has made reasonable efforts to  
10 prevent the need for removal of the child from the home. Where  
11 the court finds the department's efforts have not been reasonable,  
12 but further efforts could not permit the child to safely remain at  
13 home, the court may authorize removal of the child, but shall note  
14 the failure of the department in the court order.

1 SECTION 3. Section 24 of chapter 119 of the General Laws,  
2 as most recently amended by section 2 of chapter 197 of the acts  
3 of 1984, is hereby amended by striking out the third sentence and  
4 inserting in place thereof the following sentence: — If, after a  
5 recitation under oath by the petitioner of facts of the condition  
6 of the child who is the subject of the petition, the court is satisfied  
7 that there is reasonable cause to believe that the child is suffering  
8 from serious abuse or neglect; that there are no reasonable means  
9 by which the child can be protected while remaining in the physical  
10 custody of parent(s), guardian, or other custodian; and that  
11 immediate removal of the child is necessary to protect the child  
12 from serious abuse or neglect, the court may issue an emergency  
13 order transferring custody of a child under this section to the  
14 department or to a licensed child care agency or individual  
15 described in clause (2) of section twenty-six.

1 SECTION 4. Said section of chapter 119 is hereby further  
2 amended by striking out the fifth sentence and inserting in place  
3 thereof the following sentences: — The court at this time shall  
4 determine whether such temporary custody should continue until  
5 a hearing on the merits of the petition for care and protection is  
6 concluded before said court, provided that the determination to  
7 continue such temporary custody shall not be made unless the  
8 petitioner establishes that there are no reasonable means by which  
9 the child can be protected while remaining in the physical custody  
10 of parent(s), guardian or other custodian. The order shall also  
11 include a determination as to whether the department has made  
12 reasonable efforts to prevent the need for removal of the child  
13 from the home. Where the court finds the department's efforts  
14 have not been reasonable, but further efforts could not permit the  
15 child to safely remain at home, the court may authorize removal  
16 of the child, but shall note the failure of the department in the  
17 court order.

1 SECTION 5. Said chapter 26 of chapter 119 is hereby further  
2 amended by inserting after clause (3), the following sentences: —  
3 The court shall not make an order committing the child to the  
4 custody of the department or transferring temporary legal custody  
5 unless the petitioner establishes by clear and convincing evidence  
6 that there are no reasonable means by which the child can be  
7 protected while remaining in the physical custody of parent(s),  
8 guardian, or other custodian. If the court transfers custody of a  
9 child under this section, the court shall make written findings and  
10 conclusions as to whether the department has made reasonable  
11 efforts to prevent the need for removal of the child from the home.  
12 If temporary custody of the child was transferred previously to  
13 the department or other agency or individual pursuant to section  
14 twenty-four, the court shall determine whether reasonable efforts  
15 have been made by the department or its agent to reunify the child  
16 with his parents.

17 A hearing under this section shall not be continued without a  
18 finding unless the court determines:

19 (1) That the conditions leading to the transfer of custody still  
20 exist;

21 (2) That reasonable efforts to provide services to the child are  
22 ongoing and what such services are; and

23 (3) Facts which satisfy the court that the child cannot be  
24 adequately protected if returned to the parent(s), guardian or  
25 custodian.

1 SECTION 6. Said section 26 of chapter 119 is hereby further  
2 amended by adding the following sentences: — Such review shall  
3 include a determination of whether reasonable efforts have been  
4 made by the department to provide services to reunify the child  
5 with his parents.