

HOUSE No. 5651

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 28, 1991.

The committee on Human Services and Elderly Affairs, to whom were referred the petition (accompanied by bill, Senate, No. 536) of Michael LoPresti, Jr., William R. Keating, Alvin E. Thompson and W. Paul White for legislation to improve the protection and care of children, and the petition (accompanied by bill, House, No. 996) of Marie J. Parente, Gloria L. Fox, Stanley C. Rosenberg and Larry F. Giordano relative to the removal of children from their homes by the Department of Social Services and providing for the reunification of families, reports recommending that the accompanying bill (House, No. 5651) ought to pass.

For the committee,

MARIE J. PARENTE.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE PROTECTION AND CARE OF CHILDREN AND THE REUNIFICATION OF THE FAMILY.

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 sentence: —
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 are not
19 limited to individual or group counseling, referral to local self-
20 help parent group, homemaker or parent aid services, respite care,
21 intensive home-based services, day care or babysitting services or
22 parent 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 sentence: — 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 the 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 home. Where the court finds the department's efforts have
14 not been reasonable, but further efforts could not permit the child
15 to safely remain at home, the court may authorize removal of the
16 child, but shall not the failure of the department in the 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 custody of parent(s), guardian,
8 or other custodian. If the court transfers custody of a child under
9 this section, the court shall make written findings and conclusions
10 as to whether the department has made reasonable efforts to
11 prevent the need for removal of the child from the home. If
12 temporary custody of the child was transferred previously to the
13 department or other agency or individual pursuant to section
14 twenty-four, the court shall determine or its agent to reunify the
15 child with his parents.

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

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

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

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

1 SECTION 6. Said section 26 of chapter 119 is hereby further
2 amended by adding the following sentence: — 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.

1 SECTION 7. Section 29B of chapter 119 of the General Laws,
2 as most recently amended by chapter 663 of the acts of 1989 is
3 hereby amended by inserting after the second paragraph the
4 following paragraphs: —

5 Prior to any and all hearings convened by a court of competent
6 jurisdiction to determine the future status of the child, the
7 department shall submit to the court a plan for the child which
8 shall be prepared following uniform standards and guidelines
9 developed by the department. Such plan shall include information
10 upon which the court may determine whether the department
11 made reasonable efforts, as defined in Section 21, prior to the
12 placement of the child in foster care, to prevent or eliminate the
13 need for removal of the child from his or her home and whether
14 reasonable efforts were made, as defined in Section 21, subsequent
15 to removal, to make it possible for the child to be reunited with
16 his or her family.

17 Said plan shall consider the best interests of the child and shall
18 include, but not be limited to:

19 (1) a description of the precipitating factors present in the home
20 that lead to the removal of the child from his or her home;

21 (2) the specific supportive and rehabilitative services and other
22 assistance provided by the department to maintain the child in
23 his or her home and to prevent the need for removal from the
24 home;

25 (3) the direct effects on the child of the family conditions prior
26 to the time of removal and the subsequent effects on the child of
27 placements in foster care or other out-of-home placement;

28 (4) the specific supportive and rehabilitative services and other
29 assistance provided by the department to reunify the child with
30 his or her family, including a description of visitation between the
31 child and family;

32 (5) the factors present at the time the plan is formulated which
33 indicate that the child cannot be adequately protected if returned
34 to his or her family;

35 (6) any and all other factors considered by the department in
36 formulating its plan for the future status of the child.

37 The child, parent(s) or guardian(s) may present evidence to the
38 court in support or objection to any or all of the department's
39 plan.



