

M.G.L.A. 119 § 51A



Massachusetts General Laws Annotated [Currentness](#)

Part I. Administration of the Government

Title XVII. Public Welfare

[Chapter 119](#). Protection and Care of Children, and Proceedings Against Them ([Refs & Annos](#))

[Physically or Emotionally Injured Children](#) ([Refs & Annos](#))

+++ CURRENT VERSION +++

VIEW ALL VERSIONS

→ § 51A. Injured children; reports

Any 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, public or private school teacher, educational administrator, guidance or family counselor, day care worker or any 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 pursuant to the provisions of chapter twenty-eight A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs, probation officer, clerk/magistrate of the district courts, parole officer, social worker, foster parent, firefighter or policeman, licenser of the office of child care services or any successor agency, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of [section one hundred and sixty-five of chapter one hundred and twelve](#), drug and alcoholism counselor, psychiatrist, and clinical social worker, 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, or 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, who, in his professional capacity shall have reasonable cause to believe that a child under the age of eighteen years is suffering physical or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth, shall immediately report such condition to the department by oral communication and by making a written report within forty-eight hours after such oral communication; provided, however, that whenever such person so required to report is a member of the staff of a medical or other public or private institution, school or facility, he shall immediately either notify the department or notify the person in charge of such institution, school or facility, or that person's designated agent, whereupon such person in charge or his said agent shall then become responsible to make the report in the manner required by this section. Any such hospital personnel preparing such report, may take or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of such report without the consent of the child's parents or guardians. All such photographs or copies thereof shall be sent to the department together with such report. Any such person so required to make such oral and written reports who fails to do so shall be punished by a fine of not more than one thousand dollars. Any person who knowingly files a report of child abuse that is frivolous shall be punished by a fine of not more than one thousand dollars.

Said reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the child's sex; the nature and extent of the **child's** injuries, **abuse**, maltreatment, or neglect, including any evidence of prior injuries, abuse, maltreatment, or neglect; the circumstances under which the person required to report first became aware of the **child's** injuries, **abuse**, maltreatment or neglect; whatever action, if any, was taken to treat, shelter, or otherwise assist the child; the name of the person or persons making such report; and any other information which the person **reporting** believes might be helpful in establishing the

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cause of the injuries; the identity of the person or persons responsible therefor; and such other information as shall be required by the department.

Any person required to report under this section who has reasonable cause to believe that a child has died as a result of any of the conditions listed in said paragraph shall report said death to the department and to the district attorney for the county in which such death occurred and to the medical examiners as required by [section six of chapter thirty-eight](#). Any such person who fails to make such a report shall be punished by a fine of not more than one thousand dollars.

In addition to those persons required to report pursuant to this section, any other person may make such a report if any such person has reasonable cause to believe that a child is suffering from or has died as a result of such abuse or neglect. No person so required to report shall be liable in any civil or criminal action by reason of such report. No other 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; provided, however, that such person did not perpetrate or inflict said abuse or cause said neglect. Any person making such report who, in the determination of the department or the district attorney may have perpetrated or inflicted said abuse or cause said neglect, may be liable in a civil or criminal action.

No employer of those persons required to report pursuant to this section shall discharge, or in any manner discriminate or retaliate against, any person who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect. Any such employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.

Within sixty days of the receipt of a report by the department from any person required to report, the department shall notify such person, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child, and the social services that the department intends to provide to the child or his family.

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 by [sections 20A](#) and [20B of chapter two hundred and thirty-three](#), relating to confidential communications shall not prohibit the filing of a report pursuant to the provisions of this section or the provisions of [section twenty-four](#).

Notwithstanding [section 20A of chapter 233](#), a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner shall report all cases of abuse under this section, but 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 a reasonable cause that a child is being injured as set forth in 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 reporter.

CREDIT(S)

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 276, § 4; St.1977, c. 501; St.1977, c. 942; St.1978, c. 215, § 1; St.1979, c. 312, § 1; St.1980, c. 434; St.1981, c. 91, § 2; St.1982, c. 102; St.1983, c. 222; St.1984, c. 83, § § 1, 2; St.1985, c. 209; St.1986, c. 230, § § 1, 2; [St.1989, c. 219](#); [St.1989, c. 535, § 5](#); [St.1990, c. 474, § 1](#); [St.1991, c. 280](#); [St.1992, c. 115, § 1](#); [St.1993, c. 50, § 23](#); [St.1997, c. 197](#); [St.2002, c. 107, § § 1 to 4](#).

HISTORICAL AND STATUTORY NOTES

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St.1973, c. 1076, § 5, adding this section and § § 51B to 51G of this chapter, was approved Nov. 21, 1973.

St.1975, c. 276, § 4, in the first paragraph, substituted "eighteen years" for "sixteen years".

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St.1975, c. 276, was approved June 2, 1975. Emergency declaration by the Governor was filed June 3, 1975.

St.1977, c. 501, approved Sept. 7, 1977, in the third paragraph, added the second sentence.

St.1977, c. 942, an emergency act, approved Jan. 5, 1978, in the first paragraph, added the second sentence.

St.1978, c. 215, § 1, approved June 6, 1978, and by § 3 made effective Jan. 1, 1979, inserted the fifth (now sixth) paragraph.

Section 2 of St.1978, c. 215, provides:

"The department of public welfare shall notify all categories of persons required to report under the provisions of section fifty-one A of chapter one hundred and nineteen of the General Laws of their responsibilities provided in said section. The failure of any person required to report, to receive notification as described in this section, shall not be a defense to any action brought pursuant to section fifty-one A."

St.1979, c. 312, § 1, approved June 22, 1979, and by § 2 made effective Oct. 31, 1979, in the first paragraph, in the first sentence, inserted ", foster parent".

St.1980, c. 434, approved July 9, 1980, in the first paragraph, in the first sentence, inserted ", hospital personnel engaged in the examination, care or treatment of persons", ", chiropractor, podiatrist, osteopath", and ", day care worker".

St.1981, c. 91, § 2, approved April 14, 1981, rewrote the sixth (now seventh) paragraph, which prior thereto read:

"Any privilege established by section twenty or twenty B of chapter two hundred and thirty-three, by court decision or by profession code relating to the exclusion of confidential communications and the competency of witnesses, may not be invoked in any civil action arising out of a report made pursuant to this section."

St.1982, c. 102, approved May 26, 1982, in the first paragraph, the first sentence, inserted "psychologist, emergency medical technician," and ", firefighter".

St.1983, c. 222, approved June 30, 1983, in the sixth (now seventh) paragraph, substituted "the provisions of this section or the provisions of section twenty-four" for "this section".

St.1984, c. 83, § 1, approved June 15, 1984, in the first paragraph, inserted the second and third sentences.

Section 2 of St.1984, c. 83, in the fourth paragraph, in the third sentence, deleted "a" following "making such" and added the proviso; and added the fourth sentence.

St.1985, c. 209, approved July 29, 1985, in the first paragraph, in the first sentence, inserted "clerk/magistrate of the district courts,".

St.1986, c. 230, § 1, approved July 15, 1986, in the first paragraph, in the first sentence, inserted "or any 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 pursuant to the provisions of chapter twenty-eight A, which provides day care or residential services to children".

Section 2 of St.1986, c. 230, inserted the fifth paragraph.

St.1989, c. 219, approved July 11, 1989, in the first paragraph, in the first sentence, inserted "or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs".

St.1989, c. 535, § 5, approved Nov. 17, 1989, in the seventh paragraph, substituted "sections one hundred and

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thirty-five A and one hundred and thirty-five B" for "section one hundred and thirty-five".

St.1990, c. 474, § 1, approved Dec. 29, 1990, in the first paragraph, in the first sentence, inserted ", office for children licensor, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of section one hundred and sixty-five of chapter one hundred and twelve, drug and alcoholism counselor, psychiatrist, and clinical social worker".

St.1991, c. 280, approved Oct. 18, 1991, in the first paragraph, in the first sentence, inserted ", parole officer".

St.1992, c. 115, § 1, approved July 13, 1992, in the first paragraph, added the fifth sentence.

St.1993, c. 50, § 23, approved May 20, 1993, and by § 78 made effective upon passage, in the first paragraph, in the first sentence, deleted "serious" following "under the age of eighteen years is suffering", and inserted "which causes harm or substantial risk of harm to the child's health or welfare".

St.1997, c. 197, approved Nov. 26, 1997, in the first paragraph, in the first sentence, inserted ", optometrist".

St.2002, c. 107, § 1, an emergency act, approved May 3, 2002, effective May 3, 2002, in the first paragraph, in the first sentence, substituted "licensor of the office of child care services or any successor agency" for "office for children licensor".

Section 2 of St.2002, c. 107, in the first paragraph, in the first sentence, inserted ", 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, or 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" following "worker".

Section 3 of St.2002, c. 107, in the seventh paragraph, substituted "sections 20A and 20B" for "section twenty B".

Section 4 of St.2002, c. 107, added the eighth paragraph.

Section 5 of St.2002, c. 107, provides:

"Any individual mentioned in section 51A of chapter 119 of the General Laws, as amended by section 2 of this act, who was not previously subject to said section 51A and who on the effective date of this act has reasonable cause to believe that a child under the age of 18 years is or was being injured as set forth in section 51A, except if this belief is based solely on information exempt from reporting under section 4 of this act, shall make the reports required by said section 51A to the department of social services within 30 days after the effective date of this act. If on the effective date of this act, the alleged victim is no longer under the age of 18 years, the individual required by this section to report shall instead make a report to the office of the district attorney for the district where the alleged abuse occurred within 30 days after the effective date of this act and shall notify the alleged victim in writing of this report.

"Reports required by this section shall be subject to the penalties provided in said section 51A."

CROSS REFERENCES

Issuance of license to engage in business or profession, statements regarding obligation to report child abuse and neglect, see [c. 112, § 1A](#).

Reporting requirements of **child abuse** and neglect, notification to school personnel, see [c. 71, § 37L](#).

CODE OF MASSACHUSETTS REGULATIONS

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Reports and referrals to district attorney, social services department, see [110 CMR 4.50](#) et seq.

Social services, intake for protective service delivery, see [110 CMR 4.20](#) et seq.

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Accountability in child protection system: A defense of proposed standards relating to abuse and neglect. Randall R. McCathren (1977) 57 B.U.L.Rev. 707.

Addressing the Tension Between the Clergy-Communicant Privilege and the Duty to Report Child Abuse in State Statutes. Norman Abrams. XLIV B.C.L. Rev. 1127 (2003).

Child abuse: In search of a proper defendant. (1978) 13 New Eng.L.Rev. 802.

Child protective legislation. Arthur Harris Rosenberg (1970) 14 Boston B.J. No. 8, p. 9.

Commonwealth v. Cadwell: Deliberate premeditation, extreme atrocity and cruelty, and the battered child syndrome--a new look at criminal culpability in Massachusetts. (1979) 14 New Eng.L.Rev. 812.

Drugs, family violence and the transient adult: Does increased state intervention in the family protect children? Jacquelynne J. Bowman, [35 Boston B.J. 20 \(1991\)](#).

Ethical Issues in Guardian Ad Litem Practice. Marcia M. Boumil. [86 Mass. L. Rev. 8 \(2001\)](#).

"Family Autonomy" or "Coercive intervention"? Ambiguity and conflict in proposed standards for child abuse and neglect. Richard Bourne, Eli H. Newberger (1977) 57 B.U.L.Rev. 670.

Injury or abuse of children. Monroe L. Inker, 11 Ann.Surv.Mass.L. 77 (1964).

The lawyer is in: Doctors prescribing legal remedies. 12 B.U. Public Interest L.J. 461 (2003).

Mandated clergy **reporting of child abuse**. J. Thomas Kirkman and Elizabeth R. Thompson, 87 Mass. L. Rev. 155 (Spring, 2003).

Massachusetts star chamber in process. Max Volterra, 83 Mass.L.Rev. 347 (1998).

[Overview of MASS.GEN.L. ch. 209A, the Abuse Prevention Statute, and the prosecutorial role of the District Attorney's office. John P. Zanini, 28 New Eng.L.Rev. 261 \(1993\).](#)

Parent-child relationship. Neil L. Chayet, 17 Ann.Surv.Mass.L. 107 (1970).

The public policy exception to arbitral finality: Protecting children and preserving the sanctity of arbitration. 12 B.U. Public Interest L.J. 461 (2003).

Reconciling interests of parent, child and state. (1979-1980) 15 New Eng.L.Rev. 853.

Standards for care and protection proceedings. Judith A. Cowin (1981) 66 Mass.L.Rev. 77.

Synopsis: Standards relating to abuse and neglect. (1977) 57 B.U.L.Rev. 663.

Trading custody for care: Why parents are forced to choose between the two and why the government must support the Keeping Families Together Act. Elizabeth A. Varney, [39 New Eng. L. Rev. 755 \(2005\)](#).

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[178 ALR, Federal 87](#), Crime-Fraud Exception to Work Product Privilege in Federal Courts.

[112 ALR 5th 263](#), Vacating on Public Policy Grounds Arbitration Awards Reinstating Discharged Employees--State Cases.

[31 ALR 3rd 565](#), What Constitutes "Custodial Interrogation" Within Rule of Miranda v Arizona Requiring that Suspect be Informed of His Federal Constitutional Rights Before Custodial Interrogation.

Encyclopedias

[32 Am. Jur. Proof of Facts 3d 189](#), Proof of Waiver of Attorney-Client Privilege.

[38 Am. Jur. Trials 1](#), Professional Liability for Failure to Report Child Abuse.

[38 Am. Jur. Trials 651](#), Representing the Grand Jury Target Witness.

Treatises and Practice Aids

[47 Mass. Prac. Series § 6.4](#), Ethical Considerations-Duty to Disclose.

[1 Mass. Prac. Series § 8:13](#), Statutes Governing Care and Protection of Children and Termination of Parental Rights.

[3 Mass. Prac. Series § 64:2](#), The Diverse Forms of Substitute Care in Massachusetts.

[3 Mass. Prac. Series § 65:1](#), The Care and Protection Proceeding.

[3 Mass. Prac. Series § 65:2](#), The Statutory Basis of Actions for the Care of Children.

[3 Mass. Prac. Series § 65:4](#), Parties Involved in Actions for Care and Protection of Minor Children.

[3 Mass. Prac. Series § 65:7](#), Duty of Certain Persons to Report Child Abuse.

[12 Mass. Prac. Series § 25.73](#), Privilege-Physician and Patient.

[18 Mass. Prac. Series § 404](#), Civil Rights Act of 1871 ([42 U.S.C.A. § 1983](#))-Generally.

[19 Mass. Prac. Series ST. 525](#), Evidentiary Standard 525. Records Concerning Physically or Emotionally Injured Children.

[2A Mass. Prac. Series § 47:12](#), Factors Considered in Child Custody Disputes Between Parents.

[20 Mass. Prac. Series App. C ST. 525](#), Evidentiary Standard 525. Records Concerning Physically or Emotionally Injured Children.

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[32 Mass. Prac. Series § 322](#), Assault and Battery.

[32 Mass. Prac. Series § 331](#), Abuse of Children.

[32 Mass. Prac. Series § 705](#), Juvenile-Care and Protection.

37 Mass. Prac. Series § 34, Constitutional Issues.

37 Mass. Prac. Series § 188, Discipline.

[38 Mass. Prac. Series § 93](#), Ultra Vires Exercises of Delegated Power.

[39 Mass. Prac. Series § 1166](#), Exemption C-Personnel and Medical Files or Information and Unwarranted Invasions of Personal Privacy Exemption.

[42 Mass. Prac. Series § 4.63](#), Department of Social Service Records.

[44 Mass. Prac. Series § 103](#), Jurisdiction and Venue.

[44 Mass. Prac. Series § 108](#), Reporting of Abuse or Neglect to the Department of Social Services-Section 51A of G.L. C. 119.

[44 Mass. Prac. Series § 115](#), Trial-Evidentiary Considerations.

[44 Mass. Prac. Series § 118](#), Sufficiency of the Evidence and Sufficiency of the Judge's Findings-Findings of Fact and Conclusions of Law; Forms.

[44 Mass. Prac. Series § 119](#), Sufficiency of the Evidence and Sufficiency of the Judge's Findings-Examples.

[44 Mass. Prac. Series § 133](#), (New) Juvenile Court Rules Applicable to Care and Protection, Guardianship of Minor and Adoption Consent Proceedings.

[44 Mass. Prac. Series § 232](#), Department of Social Services (Dss)-Internal Processing of Reports of Child Abuse or Neglect; Notice to Parents.

[49 Mass. Prac. Series § 2.6](#), Privileges Recognized Under Massachusetts Law.

[49 Mass. Prac. Series § 2.8](#), Work Product Doctrine.

[49 Mass. Prac. Series § 5.22](#), Responding to Request-Grounds for Objecting to Request-Privilege.

[14A Mass. Prac. Series § 11.52](#), Removal of Child from Parents' Custody-Generally.

[14B Mass. Prac. Series § 14.2](#), Obligation to Report.

[14B Mass. Prac. Series § 14.3](#), Contents of Report.

[14B Mass. Prac. Series § 14.4](#), Legal Protection for Reporters.

[14B Mass. Prac. Series § 14.5](#), Investigation by Department of Social Services-Initial Steps.

[14B Mass. Prac. Series § 13.99](#), Psychotherapist-Patient Privilege-Exceptions.

[14B Mass. Prac. Series § 14.21](#), Trial on the Merits-Generally.

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[17A Mass. Prac. Series § 38.2](#), The Duty of the Defendant-Physicians and Surgeons.

17B Mass. Prac. Series § 52.46, Rape.

[17C Mass. Prac. Series § 61.3](#), Care and Protection of Children.

[18A Mass. Prac. Series § 917](#), Health and Safety.

37A Mass. Prac. Series § 552, Miscellaneous Immunities.

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[1](#). Construction and application

Department of Social Services' regulatory definition of "neglect," which did not require actual physical or emotional injury to a child, did not conflict with statute regarding abuse or neglect of children, extend the Department's authority beyond what the legislature intended, or undermine the purpose of the statute; definition allowed Department to identify and provide services to any child whose caretaker was failing to provide a minimally adequate level of essential care for the child, and thus, owner of day care center could be found to have neglected child by leaving child in car, even though child suffered no physical injury. [Lindsay v. Department of Social Services \(2003\) 791 N.E.2d 866, 439 Mass. 789](#). Infants  17.5

Crime-fraud exception to attorney-client privilege did not apply to private school's documents concerning alleged abuse of students by other students, which was the subject of a grand jury investigation, with respect to students who did not disclose alleged abuse until after they had turned 18 years old; school had no statutory duty to report abuse of those students. [In re Grand Jury Investigation \(2002\) 772 N.E.2d 9, 437 Mass. 340](#). Grand Jury  36.3(2)


[2](#). Purpose

Intent of this section is to protect children from the emotional harm of threatened injury as well as from the physical harm of actual injury. Op.Atty.Gen., May 27, 1975, p. 139.

[3](#). Reasonable cause to believe

Department of Social Services' willingness to close the case after parents declined to participate in counselling on


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voluntary basis confirmed that Department's decision to support report of abuse, based on father's alleged spanking of nine-year-old child with belt, was not founded on rational inferences drawn from the record. [Cobble v. Commissioner of Dept. of Social Services \(1999\) 719 N.E.2d 500, 430 Mass. 385](#). Infants  156

The phrase "reasonable cause to believe" should be construed as the equivalent to "known or suspected instances of **child abuse** and neglect" used in the federal regulations ([45 C.F.R. 1340.3-3\(d\)\(2\)\(i\)](#)), and refers to the standard to be applied by those persons **reporting** to the department of welfare. Op.Atty.Gen., June 16, 1975, p. 157.

The phrase "reasonable cause to believe" is not intended to restrict reporting of cases of abuse or neglect or acceptance of such reports; and, written documentation of "reasonable cause" is not required by this section or by the department of public welfare. Op.Atty.Gen., May 27, 1975, p. 139.


4. Injury


Evidence did not support finding that day care teacher had emotionally maltreated four-year-old child in her care; child claimed on different occasions that teacher had cut or cut off his penis, and child claimed to have had difficulty urinating, but physician who examined child found no evidence of physical abuse, and there was no evidence of any other harm to child. [Arnone v. Commissioner of Dept. of Social Services \(1997\) 680 N.E.2d 945, 43 Mass.App.Ct. 33](#). Infants  133


The term "serious physical or emotional injury" in the context of this section includes all but the most negligible or de minimis injuries to children and the standard thus established applies to those instances in which certain enumerated professionals are required to make reports to the department of public welfare. Op.Atty.Gen., June 16, 1975, p. 157.

Serious physical or emotional injury applies only to those instances in which certain enumerated professionals are required, as a matter of law, to make reports to the department of public welfare but the reporting of injury and access to services is in no manner restricted to serious injury. Op.Atty.Gen., May 27, 1975, p. 139.

5. Report indicators--In general



Nine-year-old child's statements that spankings by father with belt left temporary red or pink marks on his buttocks that would fade after ten minutes or so did not establish abuse or substantial risk of abuse, as basis for Department of Social Services to support a report of abuse. [Cobble v. Commissioner of Dept. of Social Services \(1999\) 719 N.E.2d 500, 430 Mass. 385](#). Infants  156

Pediatrician's statement that father's use of belt to spank nine-year-old child "wouldn't help" the boy's arthrogryposis, a congenital muscle condition, and pediatrician's voicing of his concerns in response to questions from investigator that apparently did not accurately describe the nature of the corporal punishment but merely referred loosely to father's "using a belt to discipline" the child, did not establish substantial risk of abuse, as basis for Department of Social Services to support a report of abuse. [Cobble v. Commissioner of Dept. of Social Services \(1999\) 719 N.E.2d 500, 430 Mass. 385](#). Infants  156


Allegations that father had spanked nine-year-old child with belt five or six times during preceding seven-month period, that father's demonstration on sofa cushion of force he used on child made "a solid smack," and child's own report of temporary red or pink marks on his buttocks did not make reasonably probable the Department of Social Services' conclusion that soft tissue swelling or skin bruising was substantially likely to result from father's method of corporal punishment, as basis for Department's decision to support a report of abuse. [Cobble v. Commissioner of Dept. of Social Services \(1999\) 719 N.E.2d 500, 430 Mass. 385](#). Infants  156

This section requiring school personnel to file reports concerning suspected **child abuse** does not require **reporting** of every bruise, but rather requires **reporting** on basis of indicators which give reasonable cause to believe that child


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is being abused. [Mattingly v. Casey \(1987\) 509 N.E.2d 1220, 24 Mass.App.Ct. 452](#), review denied [513 N.E.2d 1289, 400 Mass. 1106](#). Schools  63(3); Schools  147

6. ---- Sexual behavior, report indicators


Where two minor girls had told social worker that they had engaged in certain sexual behavior with their two minor uncles, city children's services association had reasonable cause to believe that minor uncles were "neglected," and thus properly filed neglect report, notwithstanding that representative of association had not met minor uncles prior to filing of report. [April K. v. Boston Children's Service Ass'n, D.C.Mass.1984, 581 F.Supp. 711](#). Infants  17


7. Liability for failure to report

Crime-fraud exception to attorney-client privilege applied to private school's documents concerning alleged abuse of students under age of 18 by other students, which was the subject of a grand jury investigation; school officials and teachers had knowledge of reportable abuse, school failed to report such abuse, and there was evidence that school may have resorted to cover of attorney-client privilege to obscure its responsibility for not reporting information, mischaracterizing its actions, and downplaying nature of abuse to public. [In re Grand Jury Investigation \(2002\) 772 N.E.2d 9, 437 Mass. 340](#). Grand Jury  36.3(2)


School personnel and supervisor of protective services unit of Department of Public Welfare were not liable to estate of child who died of **child abuse** for failure to comply with this section requiring "immediate **reporting**" of likely cases of abuse; defendants, as public officials, were liable only for misfeasance, and gravamen of complaint was nonfeasance. [Mattingly v. Casey \(1987\) 509 N.E.2d 1220, 24 Mass.App.Ct. 452](#), review denied [513 N.E.2d 1289, 400 Mass. 1106](#). Schools  63(3); Schools  147

8. Interrogation


Department of Social Services investigator who interviewed defendant regarding allegations that he sexually abused child was not required to warn defendant that investigator was obligated to report incriminating statements to law enforcement officials. [Com. v. Morais \(2000\) 727 N.E.2d 831, 431 Mass. 380](#). Criminal Law  412.1(4)

Defendant was not in custody when interviewed by Department of Social Services investigator regarding allegations that he sexually abused child, and thus no *Miranda* warning was required during the investigatory interview. [Com. v. Morais \(2000\) 727 N.E.2d 831, 431 Mass. 380](#). Criminal Law  412.2(2)


9. Voluntary statements


Incriminating statements made by defendant, during interview conducted by Department of Social Services investigator regarding allegations that defendant sexually abused child, were voluntary, though investigator concealed from defendant her duty to report incriminating statements to law enforcement officials, where defendant voluntarily met with investigator, he was aware that he was subject of sexual abuse investigation, defendant appeared lucid and unconfused during interview, and investigator made no contact with police prior to interview and made no misrepresentation about her duties. [Com. v. Morais \(2000\) 727 N.E.2d 831, 431 Mass. 380](#). Criminal Law  412.1(4)

10. Privileged communications


Documents concerning private school's internal investigation of alleged abuse of students by other students, which was the subject of a grand jury investigation, were not protected by attorney-client privilege; teachers and school officials were required to report any arguably reasonable suspicion that a child under the age of 18 was suffering from abuse, investigation may have yielded reportable information about harm to children, and school had touted its internal investigation to the public in effort to explain and defend its actions. [In re Grand Jury Investigation \(2002\) 772 N.E.2d 9, 437 Mass. 340](#). Grand Jury  36.3(2)




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Commonwealth's release, as part of its discovery obligations in child sexual abuse prosecution, of social worker's report concerning suspected abuse, report by Department of Social Services concerning its follow-up investigation, and videotape of interviews of alleged victims conducted by employee of district attorney's office did not constitute a waiver of any of alleged victims' privileges with respect to confidential communications to social workers. [Com. v. Pelosi \(2002\) 771 N.E.2d 795, 55 Mass.App.Ct. 390](#), review granted [782 N.E.2d 1083, 438 Mass. 1106](#), remanded [805 N.E.2d 1, 441 Mass. 257](#). Witnesses  219(1)


Seeming statutory dissonance between statute which confers privileged status upon communications between patient and psychotherapist and statute which requires psychotherapist to report to Department of Social Services instances of reasonable cause to believe that child under age of 18 has suffered serious physical or emotional injury resulting from sexual abuse is actually legislative resolution of disparate, but not discordant, policy objectives; by absolving psychotherapist who makes report under latter statute from strictures of former, legislature gave higher priority to protection of children than protection of psychotherapist-patient confidences. [Com. v. Souther \(1991\) 575 N.E.2d 1150, 31 Mass.App.Ct. 219](#). Witnesses  185


11. Admissibility of evidence

Reports of abuse and neglect filed and substantiated against child's grandmother, one of several proposed adoptive parents for child, and against persons to whom grandmother had entrusted her own children before being deported, were admissible in proceedings on alternative plans for adoption; given grandmother's recent return to United States, her behavior at time of her prior residence, as set forth in reports, was relevant to consideration of her fitness to have custody of her grandchild. [In re Adoption of Irene \(2002\) 767 N.E.2d 91, 54 Mass.App.Ct. 613](#), review denied [773 N.E.2d 442, 437 Mass. 1106](#). Infants  208

In determining whether child is in need of care and protection, case work documents and court investigator reports are generally admissible; however, compilers of and sources for documents must be available for cross-examination, giving parents opportunity to rebut any adverse or erroneous information, and with respect to case work documents, expectation is that they be admitted with opinion, evaluation, and judgment material edited out wherever feasible. [Adoption of Iris \(1997\) 680 N.E.2d 1188, 43 Mass.App.Ct. 95](#), review denied [707 N.E.2d 1077, 427 Mass. 1103](#), affirmed [695 N.E.2d 645, 427 Mass. 582](#). Infants  174; Infants  207; Infants  208


Although reports of social worker prepared in connection with child care and protection proceedings were not admissible substantively, their admission did not require reversal of juvenile court's order that child be committed to Department of Social Services (DSS) due to father's unfitness, where Appeals Court had no doubt that judge would have reached same result without the few additional facts that appeared in social worker's reports that were not inadmissible court-appointed investigator's reports. [Care and Protection of Leo \(1995\) 646 N.E.2d 1086, 38 Mass.App.Ct. 237](#). Infants  173.1; Infants  253


Reports of social worker prepared in connection with care and protection proceedings were admissible to set stage for bringing of care and protection petition. [Care and Protection of Leo \(1995\) 646 N.E.2d 1086, 38 Mass.App.Ct. 237](#). Infants  208


Although opinions of sexual abuse evaluator, in appendices of court-appointed investigator's report admitted in child care and protection proceeding, that some of the child's statements were highly credible and that evaluation showed strong indications that child has been subjected to sexual abuse were both clearly inadmissible, and, in other circumstances, might be deemed sufficiently prejudicial to require reversal of finding of father's unfitness, admission of opinions did not require reversal in case where there was extremely strong evidence of both physical and sexual abuse of child by father contained in properly admitted portions of investigator's report and reflected in judge's findings, coupled with father's long criminal record. [Care and Protection of Leo \(1995\) 646 N.E.2d 1086, 38 Mass.App.Ct. 237](#). Infants  253


Hearsay allegations of sexual abuse made by daughter, which were contained in § 51A report which was made


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following physician's report of possible physical abuse of son, could not be considered substantively in care and protection proceeding, where neither daughter nor author of report testified as to allegations. [Care and Protection of Inga \(1994\) 634 N.E.2d 591, 36 Mass.App.Ct. 660](#). Infants  174


Trial court was required to conduct hearing to determine whether daughter was competent or was unavailable to testify before denying father's request for his daughter to appear as witness, for ostensible purpose of refuting her statements that he had sexually abused her, on grounds that there might be problem in declaring child competent to testify and that probative value might be outweighed by harm to child, as such ruling denied father opportunity to rebut, effectively, child's statements. [Adoption of Sean \(1994\) 630 N.E.2d 604, 36 Mass.App.Ct. 261](#). Witnesses  79(2)

Any error by trial court in using daughter's statements to physician, set forth in guardian ad litem report, as proof that her father sexually abused her was harmless, in proceeding to dispense with parental consent to adoption, since judge's finding of sexual abuse could have rested upon statements in another report, to which no objections were lodged. [Adoption of Sean \(1994\) 630 N.E.2d 604, 36 Mass.App.Ct. 261](#). Adoption  15


Trial court's error in relying on hearsay statements of daughter of sexual abuse by father without conducting hearing to determine child's unavailability as witness or to determine whether child was competent was harmless, in proceeding to dispense with parental consent to adoption; determination of current parental unfitness did not rest solely on finding of father's abuse, but, rather, rested primarily upon parents' failure in past to provide adequate hygiene, diet, and living conditions and their inability to control and discipline children. [Adoption of Sean \(1994\) 630 N.E.2d 604, 36 Mass.App.Ct. 261](#). Adoption  15

Admissibility at trial for indecent assault and battery of Department of Social Services' records regarding underlying notification and investigation of alleged abuse of minor would have to be passed upon by trial judge at in camera hearing. [Com. v. Arthur \(1991\) 575 N.E.2d 1147, 31 Mass.App.Ct. 178](#). Criminal Law  671

Even if reports admitted into evidence in adoption proceedings were improper hearsay evidence, any error was harmless, where judge did not rely on the reports substantively, but rather referred to them only to explain how and why various proceedings were initiated. In re [Adoption of Daphne \(2003\) 788 N.E.2d 1021, 58 Mass.App.Ct. 1103](#), Unreported. Adoption  15

Father waived for appeal issue of whether reports admitted in adoption proceedings were improper hearsay evidence, where father failed to object to admission of reports in trial court. In re [Adoption of Daphne \(2003\) 788 N.E.2d 1021, 58 Mass.App.Ct. 1103](#), Unreported. Adoption  15

12. Discovery

Counsel for defendant charged with indecent assault and battery on his minor stepdaughter could, under appropriate protective order, be permitted to examine Department of Social Services records to search for evidence of stepdaughter's bias, prejudice, motive to lie, or prior inconsistent statements. [Com. v. Arthur \(1991\) 575 N.E.2d 1147, 31 Mass.App.Ct. 178](#). Criminal Law  627.6(6)

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