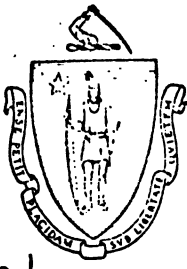


Handwritten notes:
Hing
etc.



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-FOUR

Handwritten: H21

AN ACT *HOUSE # 21*

ESTABLISHING THE CHILDREN'S REFORM ACT OF 1974

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

SECTION 1. Chapter 23B of the General Laws is hereby amended by inserting after Section 5A the following section:--

Section 5B. There shall be within the department a group residence appeals committee consisting of seven members, including the five members of the housing appeals committee established under section five A of this chapter, one member to be appointed by the secretary of the executive office of human services who shall be an officer or employee of said office or of a department within said office responsible for operating or licensing group residences and one member to be appointed by the director of the office for children who shall be an officer or employee of said office. Members shall serve for terms of one year and may be reappointed. The commissioner shall designate one of the members to serve as chairman.

A member of the committee shall receive no compensation for his services, but shall be reimbursed by the commonwealth for all reasonable expenses actually and necessarily incurred in the performance of his official duties. Said committee shall hear all petitions for review filed under section twenty-three C of chapter forty B, and shall conduct said hearings in accordance with rules and regulations established by the commissioner.

The department shall provide such space and clerical and other assistance as the committee may require.

SECTION 2. Section 2 of Chapter 28A of the General Laws, as inserted by Section 1 of Chapter 785 of the Acts of 1972, is hereby amended by striking out in lines 31 and 32 the definition of the word "child" and inserting in place thereof the following definition:--

"Child," any person under the age of eighteen or under the age of twenty-one, if such person has special needs.

SECTION 3. Said Section 2 of said Chapter 28A is hereby further amended by striking out lines 33 through 36, and inserting at the end of said section, the following definition:--

"Special needs," any temporary or permanent disability arising from intellectual, sensory, emotional, physical, or environmental factors, or any specific learning disability, which inhibits a person from achieving his full potential.

SECTION 4. Section 4 of said Chapter 28A is hereby amended by adding, after subparagraph (m), the following subparagraph:--

(n) annually review the payments for care and maintenance of children in family foster care, as defined in section nine of this chapter, made by all public agencies. In order to assure the provision of adequate funds to meet the expenses of providing such care, the office shall, after review of the report of the director of personnel and standardization relative to the percentum

change in the cost of living which may justify an increase or decrease in the salaries of all employees in the service of the commonwealth, as required under section forty-six of chapter thirty, prepare and submit a report to the governor and the general court which shall recommend changes in said payments which correspond to changes in the cost of living. Said report may include proposals for specific administrative action or legislation to implement such changes.

SECTION 5. Section 8 of said Chapter 28A is hereby amended by striking out the first paragraph, as appearing in Section 1 of Chapter 785 of the Acts of 1972, and inserting in place thereof the following paragraph:--

Section 8. There shall be a state-wide advisory council to the office to consist of the secretaries of the executive offices of human services, manpower affairs, communities and development, and educational affairs, or their designees, twelve members appointed by the governor, and one member elected by each local council for children recognized under section seven. All appointed or elected members shall serve for terms of two years. The chairman shall be appointed by the governor from the appointed or elected members and shall serve as chairman at the pleasure of the governor, provided, that no member may serve as chairman for more than two years. Appointed or elected members shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

SECTION 6. Section 9 of said Chapter 28A is hereby amended by striking out said section and inserting in place thereof the following new section:--

Section 9. The following words as used in this section and sections ten to sixteen, inclusive, shall, unless the context otherwise requires, have the following meanings:--

"Adoption," the establishment of the legal relationship of parent and child in accordance with the provisions of chapter two hundred ten.

"After-school center," any facility operated on a regular basis which receives more than six children not of common parentage between the ages of six and nine separate and apart from their parents for supervised activity between the end of the school day and six o'clock in the evening. After-school center shall not mean any program operated by a public school system, a private organized educational system, an agency or institution of the commonwealth or any political subdivision thereof.

"Child with special needs," any child who, because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, or environmental factors, or any specific learning disability is or would be unable to progress effectively in a regular school program.

"Day care center," any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage under seven years of age, or under sixteen years of age if such children have special needs, for non-residential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system, any part of a private, organized educational system unless the services of such system are primarily limited to kindergarten, nursery or related pre-school services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.

"Family day care home," any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

"Family day care system," any person who, through contractual arrangement, provides to family day care homes which it has approved as members of said system, central administrative functions including, but not limited to, training of operators of family day care homes; technical assistance and consultation to operators of family day care homes; inspection, supervision, monitoring, and evaluation of family day care homes; referral of children to available family day care homes; and referral of children to available health and social services; provided, however, that family day care system shall not mean a placement agency or a day care center.

"Family foster care," substitute parental care in a family given in a private residence for up to six children under eighteen years of age on a regular, twenty-four-a-day, residential basis by anyone other than a relative by blood or marriage.

"Group care facility," any facility which provides care and custody for one or more children under eighteen years of age, on a regular, twenty-four-hour-a-day, residential basis by anyone other than a relative by blood or marriage, notwithstanding the fact that such care may include educational instruction; provided, private schools shall be considered group care facilities

only if such schools provide special services to children with special needs. Group care facility shall not mean family foster care, a hospital, ward or comprehensive center licensed under the provisions of section twenty-nine of chapter nineteen, a hospital, ward or comprehensive center operated by the commonwealth or any subdivision thereof, a hospital, institution for unwed mothers, convalescent or nursing home, rest home, or infirmary licensed under the provisions of chapter one hundred eleven, or any facility licensed under the provisions of section forty-four of chapter one hundred twenty-three. Group care facility shall not be limited to a facility defined as a group residence in section one of chapter one hundred forty-three.

"Office," the office for children.

"Person," any individual, partnership, corporation, association, organization or trust or any department, agency or institution of the federal government or of the commonwealth or any political subdivision thereof.

"Placement agency," any person who receives by agreement with a parent or guardian, by contract with a state agency or as a result of referral by a court of competent jurisdiction, any child under eighteen years of age, for placement in family foster care or a group care facility, or for adoptive placement.

"Temporary shelter facility," any facility which receives one or more children under eighteen years of age for temporary shelter during the day or night when such children request shelter therein. Temporary shelter facility shall not mean family foster care or a group care facility.

SECTION 7. Section 10 of said Chapter 28A of the General Laws, as inserted by Section 1 of Chapter 785 of the Acts of 1972, is hereby further amended by striking out subsections (a), (b), and (c) of Section 10 and inserting, in place thereof, the following subsections:--

Section 10. (a) The office shall issue and may renew a license to any person other than a department, agency, or institution of the commonwealth or any political subdivision thereof, who meets applicable standards and requirements to establish and maintain a day care center, family day care home which is not a part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, placement agency, group care facility, after-school center, or temporary shelter facility. The office shall issue approval to a department, agency, or institution of the commonwealth or any political subdivision thereof which it deems meets such applicable standards and requirements to establish and maintain a day care center, family day care home which is not part of a family day care system, family day care system, placement agency, group care facility, or temporary shelter facility.

(b) The office may issue a provisional license for or may provisionally approve a day care center, family day care home which is not part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, placement agency, group care facility, after-school center, or temporary shelter facility, any of which has not previously operated or is operating but is temporarily unable to meet applicable standards and requirements.

(c) The office shall, pursuant to the provisions of chapter thirty A, and after consultation with the executive offices of educational affairs, manpower affairs, public safety, communities and development, and the departments of youth services, mental health, public health and public welfare, promulgate rules and regulations to carry out the purposes and functions of sections nine through sixteen. Such regulations, as they relate to standards and requirements for licensure and approval of day care centers, family day care homes which

are not part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, placement agencies, group care facilities, after-school centers, and temporary shelter facilities, shall be appropriate for the protection of the health, well-being and development of children and shall include, but need not be limited to provisions regarding (1) admission policies and procedures; (2) safe transport of children; (3) physical plant and equipment; (4) the number and qualifications of staff; (5) rights and responsibilities of parents, children and staff; (8) record keeping and other procedures relevant to evaluation; and (9) organization, financing and administration. In formulating the regulations pertinent to family day care homes and family foster care, the office shall give special attention to fire and safety precautions. Such regulations may establish classifications for licensure or approval as are necessary to achieve the purposes of sections nine through sixteen; provided, that the standards and requirements for approval of a day care center, family day care home which is not part of a family day care system, family day care system, placement agency, group care facility, or temporary shelter facility, operated by a department, agency or institution of the commonwealth or any political subdivision thereof shall be the same as or higher than those applicable to the licensure or comparable facilities or services. Such regulations shall establish reasonable license fees and appropriate terms for all licenses granted under the provisions of this section. No such license or approval shall be transferable. A provisional license or approval shall be issued for a period not to exceed six months and in no case shall a person operate under a provisional license, provisional approval, or renewal thereof for more than twelve consecutive months. Any rule or regulation involving medical treatment shall include appropriate exemptions for children whose parents object thereto on the ground that it conflicts with

the tenets and practice of a recognized church or religious denomination of which the parent or child is an adherent or member. The office shall conduct a comprehensive review of rules and regulations established under this section at least once every five years.

SECTION 8. Said Chapter 28A of the General Laws, as inserted by Section 1 of Chapter 785 of the Acts of 1972, is hereby amended by striking out Section 11 and inserting in place thereof the following new section:--

Section 11. (a) No person shall operate a day care center, family day care home, family day care system, group care facility, placement agency, after-school center or temporary shelter facility unless such person is licensed by the office; provided, however, that a person who operates a family day care home shall not be required to obtain a license if such person operates as part of a licensed family day care system; and provided further, that a department, agency or institution of the commonwealth or any political subdivision thereof shall obtain an approval rather than a license in order to operate a day care center, family day care home, family day care system, group care facility, placement agency, or temporary shelter facility.

(b) No person shall maintain a child in family foster care without placement, supervision and approval by a placement agency unless such person is licensed by the office.

SECTION 9. Chapter 40B of the General Laws is hereby amended by inserting after Section 23 the following sections:--

Section 23A. The following words, whenever used in this section and in sections 23B to 23D, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:--

"Group residence," a premises, licensed or operated by or under contract to a department or agency of the commonwealth, for the residential care in any

single building; of not more than twelve unrelated persons between the ages of seven and fifteen, inclusive, or of not more than the number of persons sixteen years of age or over as may be approved by the licensing, contracting, or operating department or agency, who are capable of self-preservation as certified in accordance with procedures established by the secretary of human services.

"Infeasible," any condition caused by any single factor or combination of factors which unreasonably restricts the establishment or operation of a group residence.

"Consistent with community needs," requirements and regulations shall be considered consistent with community needs if they are reasonable in view of the need to protect the health or safety of the occupants of the proposed group residents of the city, town or ward and if such requirements and regulations are applied as equally as possible to all housing. Requirements or regulations shall be consistent with community needs when imposed by a board of zoning appeals after comprehensive hearings in a city or town where the number of group residential units which exist in the city, town, or ward are in excess of five per cent of the housing units reported in the latest decennial census of the city, town or ward.

"Policy objectives of the commonwealth relative to group residences," the policy objectives of the commonwealth are that mentally, physically, and socially handicapped persons should, to the maximum extent possible, have the opportunity to receive care in group residences where they can live in normal residential surroundings rather than in large impersonal institution. County and municipal zoning ordinances and building codes, and other ordinances and administrative interpretations thereof, should not unreasonably obstruct the creation and operation of group residences. Each city and town in the commonwealth should be prepared to assume some responsibility in the placement of group residences; however, no city or town should bear a disproportionate share.

"Local board," any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of building of the power of enforcing municipal building codes, or any city council, board of alderman, or selectmen, or town meeting.

"Person," any individual, partnership, corporation, association or organization or any department, agency or institution of the federal government or of the commonwealth or any political subdivision thereof.

Section 23B. Any person proposing to build or to operate a group residence may submit to the board of appeals, established under section fourteen of chapter forty A, a single application to build or operate such group residence in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The provisions of section seventeen of chapter forty A shall apply to all hearings. The board of appeals shall render a decision,

based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval; provided, however, that the board of appeals shall not issue any permit or approval that would permit the building or operation of a group residence unless the applicant is able to substantially comply with the building code applicable to group residences and is licensed or operated by or under contract to a department or agency of the commonwealth, or can show that such license will issue or such contract be signed upon granting of such comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section twenty-one of chapter forty A.

Section 230. Whenever an application filed under the provisions of section twenty-three B is denied or is granted with such conditions and requirements as to make the building or operation of such group residence infeasible, the applicant shall have the right to appeal to the group residence appeals committee in the department of community affairs for a review of the same. Such appeal shall be taken within twenty days after the date of the notice of the decision by the board of appeals by filing with said committee a statement of the prior proceedings and the reasons upon which the appeal is based. The committee shall forthwith notify the board of appeals by filing of such petition for review and the latter shall, within ten days of the receipt of such notice, transmit a copy of its decision and the reasons thereof to the committee. Such appeal shall be heard by the committee within twenty days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept

and the committee shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefor within thirty days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the committee and the applicant. Such decision may be reviewed in the superior court in accordance with the provisions of chapter thirty A.

Section 23D. The hearing by the group residence appeals committee established by section five B of chapter twenty-three B shall be limited to the issue of whether, in the case of the denial of an application, the decision of the board of appeals was consistent with community needs and with the policy objectives of the commonwealth relative to group residences. In the case of an approval of an application with conditions and requirements imposed, the group residence appeals committee shall determine whether such conditions and requirements make the establishment or operation of such group residence infeasible and whether they are consistent with community needs and the policy objectives of the commonwealth relative to group residences. If the group residence appeals committee finds, in the case of a denial, that the decision needs and the policy objectives of the commonwealth relative to group residences, it shall vacate such decision and shall direct the board to issue a comprehensive permit or approval to the applicant. If said committee finds, in the case of an approval with conditions and requirements imposed, that the decision of the board makes the establishment or operation of such group residence infeasible and is not consistent with community needs and the policy objectives of the commonwealth relative to group residences, it shall order such board to modify or remove such conditions or requirements and to issue any necessary permit or approval; provided, however, that the committee shall not issue any order which would permit the establishment or operation of a group residence unless the

applicant is able to substantially comply with the building code applicable to group residences and is licensed or operated by or under contract to a department or agency of the commonwealth, or can show that such license will issue or such contract be signed upon granting of such comprehensive permit or approval.

Decisions or conditions and requirements imposed by a board of appeals that are consistent with community needs shall not be vacated, modified or removed by the committee.

The group residence appeals committee or the petitioner shall have the power to enforce the orders of the committee at law or in equity in the superior court. The board of appeals shall carry out the order of the group residence appeals committee within thirty days of its entry and upon failure to do so, the order of said committee shall, for all purposes, be deemed to be the action of said board, unless the petitioner consents to a different decision or order by such board.

SECTION 10. Chapter 71 of the General Laws is hereby amended by inserting after section 71B the following section:--

Section 71C. The school committee or any other public agency or department of any city or town or any community action or model cities program funded wholly or in part by the federal government, may file with the department of education a plan for the maximum use of school facilities for an entire city or town or one or more plans limited to school facilities serving a specified geographical section of such city or town. Each such plan shall contain a description of the programs to be established, an estimate of the costs of such programs, an enumeration of the specific schools designated for maximum use, a provision for the maximum possible participation of community residents in the implementation and operation of all programs and such other information as the commissioner of education may require.

The commissioner shall have the power to distribute to any such school committee, agency, department or program such funds as are authorized under this section.

The plan shall be administered by the proposing school committee, agency, department or program. Such school committee, agency, department or program shall appoint a director who shall be a salaried employee, not subject to the provisions of chapter thirty-one of the general laws, to implement and carry out the plan.

A school committee, agency, department or program shall receive from the commonwealth no more than two-thirds of the basic salary of each director or coordinator employed by it as part of its program for maximum use of school facilities; provided that no school committee, agency, department or program shall receive an amount greater than ten thousand dollars for each such director or coordinator. An eligible school committee, agency, department or program may apply for and receive funds toward the salary of one such director or coordinator plus the salary of one additional of such individuals for each ten thousand residents beyond the first nine thousand residents in a city

or town or in any geographical section of such city or town. In the event that the funds appropriated are not sufficient to fund all eligible positions in all cities or towns, the money shall be pro-rated on a percentage-of-cost basis among all participating school committees, agencies, departments or programs.

The commissioner of education may, by regulation, further define the requirements for the content and operation programs funded under this section. The commissioner of education shall conduct audits and evaluations of programs funded under this section and shall report the results of such audits and evaluations at least annually to the governor and the general courts.

SECTION 11. Chapter 71B of the General Laws, as inserted by chapter 766 of the acts of 1972, is hereby amended by adding the following new section:--

Section 15. As used in this chapter, the words parent or guardian shall include (1) persons with custody of a child, and (2) foster parents of children in family foster care under the auspices of a public or private placement agency approved or licensed under the provisions of chapter twenty-eight A. A child in such custody or care shall be entitled to the same rights and educational opportunity under this chapter as a child who resides in the same city or town with his legal parent or guardian.

SECTION 12. Chapter 76 of the General Laws is hereby amended by adding the following new section:--

Section 6A. Any child in the custody of a person other than his parent or guardian and any child in family foster care, as defined in section nine of chapter twenty-eight A, under the auspices of a public or private placement agency approved or licensed under the provisions of said chapter, shall be legally entitled to attend school in the city or town in which the custody or family foster care is provided and the school committee of such city or town shall provide him with the same educational opportunities as a child who resides in such city or town with his parent or guardian. For the purposes of this chapter

such city or town shall be considered the town of residence of such child.

SECTION 13. Said chapter seventy-six is hereby further amended by striking out sections seven, eight, nine, ten and eleven thereof.

SECTION 14. Chapter 112 of the General Laws is hereby amended by striking out section 12F and inserting in place thereof the following new section:--

Section 12F. No physician shall be held liable for damages for failure to obtain consent of a parent, legal guardian, or other person having custody or control of a minor child, of a minor child, or of the spouse of a patient, to emergency examination and treatment, including blood transfusions, when delay in treatment will endanger the life, limb, or mental well-being of the patient nor shall any hospital be liable for any such examination and treatment by a physician therein.

SECTION 15. Said chapter 112 of the General Laws is hereby further amended by inserting after section 12G the following new section:--

Section 12H. (a) Any minor may give consent to medical, dental or other health care at the time such care is sought if

- (1) he is married, widowed, or divorced, or
- (2) he is the parent of a child, provided that such minor may also give consent for any medical, dental, or health care for the child, or
- (3) he is a member of any of the armed forces of the united states of america, or
- (4) she is pregnant or reasonably believes herself to be pregnant, or
- (5) he is living separate and apart from his parent or legal guardian, regardless of duration of such separate residence, and is managing his own financial affairs, regardless of source of income, or
- (6) he reasonably believes himself to be suffering from or to have come in contact with an infectious, contagious, or communicable disease, or
- (7) the attending physician, dentist, or other health care personnel reasonably believes such minor is of sufficient maturity and intelligence to reasonably understand and appreciate the consequences of the proposed medical, dental, or other health care.

Such consent shall not be subject to later disaffirmance because of minority. The consent of the parent or legal guardian shall not be required to authorize such care and, notwithstanding any other provisions of law, such parent or legal guardian shall not be liable for the payment of any care rendered pursuant to this section unless such parent or legal guardian has expressly agreed to pay for such care.

(b) No physician, dentist, or other health care personnel, nor any hospital clinic, infirmary or other health care facility shall be liable, civilly or criminally for not obtaining the consent of the parent or legal guardian to render medical, dental, or other health care to a minor if, at the time such care was rendered, such persons or facilities:--

- (1) relied in good faith upon the representations of such minor and reasonably believed such minor to be legally able to consent to such treatment under section (a), or
- (2) relied in good faith upon the representations of such minor and reasonably believed such minor to be over eighteen years of age.

(c) All information and records kept in connection with the medical, dental, or other health care of minors under the provisions of section (a) of section twelve H shall be deemed confidential and no release or communication of such information and records shall be made to parent or legal guardian of such minor unless

- (1) the minor receiving such care consents in writing thereto, or
- (2) the minor requires major surgery or prolonged hospitalization.

SECTION 16. Chapter 117 of the General Laws is hereby amended by striking out section 4, as appearing in chapter 908 of the acts of 1971, and inserting in place thereof the following section:--

Section 4. The benefits of this chapter shall be available to any applicant who resides in the commonwealth and who is between the ages of eighteen and sixty-five years, or who is under the age of eighteen and is married, widowed, or

divorced; unless otherwise eligible under section twenty-three B of chapter one hundred nineteen; provided, however, that students shall not be so eligible either as an applicant or as the dependend of an applicant.

SECTION 17. Subsection D of section 23 of chapter 119 of the General Laws, as appearing in section 7 of chapter 731 of the acts of 1972, is hereby amended by striking out, in line 5, the word "sixteen" and inserting in place thereof the word:--eighteen.

SECTION 18. Chapter 119 of General Laws is hereby amended by adding, at the end thereof, the following subsection:--

G. A temporary shelter care facility or a group care facility, licensed under the provisions of chapter twenty-eight A, may, for a seventy-two hour period, upon the request of a child between the ages of fourteen and eighteen years provide custody and care to such child without parental consent provided, that (1) the child's welfare would be endangered if such custody or care were not immediately provided, and (2) the licensee has no knowledge of any offenses committed by the child which would be punishable criminally if the child were an adult.

At the expiration of such seventy-two hour period, the licensee shall (1) secure the consent of parent or guardian to continued custody and care, (2) refer the child to the department for custody and care, (3) obtain an order for custody or guardianship from a court of competent jurisdiction, which may be the probate court of the county or the juvenile court or the juvenile session of the district court for the district in which the licensee is located or (4) refuse to provide continued care and custody to said child.

SECTION 19. Section 24 of said chapter 119 as appearing in section 8 of said chapter 731 is hereby amended by striking out, in line seven, the word "sixteen" and inserting in place thereof the word:--eighteen

SECTION 20. Chapter 207 of the General Laws is hereby amended by striking section 15 and inserting in place thereof the following new sections:--

Section 15A. For the purpose of Sections 15B and 15C of this chapter, the term "born in wedlock" shall refer to a child born during the period extending from the date of the marriage to its termination by annulment or decree absolute or to 300 days after its termination by death, regardless of whether such marriage is subsequently declared void. A child "born out of wedlock" refers to any child born other than during said period.

Section 15B. Every child is the legitimate child of its biological parents and the rights and duties existing between a child and its parents shall be the same regardless of whether said child was born in wedlock, except that the rights of a father of an out-of wedlock child with respect to adoption shall be governed by Section 4A of Chapter 210 and a child conceived by artificial insemination shall have no rights against a donor who is not the husband of the mother.

Section 15C. A proceeding to determine the paternity of a child shall be a civil proceeding and the probate court shall have jurisdiction of said proceeding. Paternity may be determined upon the petition of the child or its guardian, the mother, a person alleging himself to be the father, or the public authority supporting the child. Except as provided in Chapter 190, the proceeding shall be brought in the county wherein the respondent resides, but if such residence is outside Massachusetts or if respondent is a public authority, the proceeding may be brought in the county wherein the petitioner resides.

The court or the clerk or the register of probate may notify the respondent to appear by the publication of such a form of notice as it or he may require or by delivering to the respondent an attested copy of the petition and a summons, or in such other manner as it or he may require. If the respondent does not appear and the court considers the notice defective or insufficient, it may order further notice.

No law limiting adjournments or continuances shall apply to proceedings under this section. On the request of any party, a hearing shall be continued until after the birth, miscarriage or stillbirth of the child.

The proceeding shall be closed to the public, and all records of the proceeding shall be sealed. The rules of evidence and competency of witnesses shall be as in any other civil proceeding in the probate court, and proof shall be by a preponderance of the evidence, except:--

(1) where the child is born in wedlock, the child shall be presumed to be the child of the mother's husband, and such presumption may be rebutted only by clear and convincing evidence;

(2) where the child is born out of wedlock:

(a) if the proceeding is heard after the death of the alleged father, proof shall be by clear and convincing evidence, unless the father's estate is seeking to have his paternity affirmed, or

(b) if any person is seeking to set aside an unrebutted acknowledgement of paternity as provided in section 15C of this chapter, proof shall be by clear and convincing evidence.

In any proceeding under this section, the court may order the mother, her child and the alleged father to submit to one or more blood grouping tests, to be made by a duly qualified physician or other duly qualified person, designated by the court, to determine whether or not the alleged father is the father of the child. If the blood tests exclude the alleged father, the question of paternity shall be resolved accordingly and an appropriate order shall be entered. Blood tests which do not exclude the possibility of the putative father's paternity shall be admissible in evidence at the court's discretion along with evidence, if available, of the statistical probability of paternity based on such tests. If one of the parties refuses to comply with the order

of the court relative to such tests, he shall be guilty of civil contempt of court unless the court, for good cause, otherwise orders. Unless the court otherwise orders, the state shall bear the costs of all blood tests ordered by the court pursuant to this section.

No criminal action, other than under section one of chapter two hundred sixty-eight (relating to perjury) may be brought against the putative father or mother as the result of any evidence given by them in a proceeding under this section; provided, however, that a criminal action for nonsupport may be brought under section one of chapter two hundred seventy-three if limited to offenses occurring subsequent to the determination of paternity.

If the court becomes satisfied that no living child will be born of which the putative father is the father, or that the paternity of the child has been determined, or that adequate provision has been made for its maintenance and that is for the best interests of the child, the case may be dismissed and any findings vacated; and if the court certifies that it is for the best interests of the child, no further action shall be maintained under this section.

At any time after a finding of paternity, the court may make an order for the payment of money to the mother or to a third party who will apply said money to the care and maintenance of the child.

The duty to contribute reasonably to the support of the child shall continue during its minority. The court may order the father to pay the reasonable expenses of the pregnancy and of the confinement of the mother, whether the child is born dead or alive. If the child has died, or if the child dies subsequently, the court may make an order for the payment of its funeral expenses, whether or not other relief is sought.

The court may also make such order as may be appropriate concerning the custody or visitation of the child, and from time to time may revise said order as justice and the welfare of the child require. As provided in section fifteen A of this chapter, the standard governing a determination of custody or visitation shall be the same as if the child were born in wedlock.

If a question of paternity arises in any other proceeding in the probate court, the rules set forth in this section shall apply with respect to the determination of paternity.

No action may be brought under this section once a final decree of adoption has been rendered with respect to such child.

Section 15D. Paternity may be acknowledged by the mother and father through affidavits filed with the clerk of the town where the child was born. If the father's affidavit does not accord with the affidavit filed by the mother or if the mother fails to file an affidavit prior to or contemporaneous with the father's affidavit, then the clerk shall give due notice of the father's affidavit to the mother, as provided in chapter forty-six, section thirteen. If she does not contest said affidavit within the time provided in said section thirteen, the child shall be considered the child of the alleged father, until a contrary determination of paternity is made upon clear and convincing evidence in a proceeding under section fifteen B of this chapter.

SECTION 21. Chapter 210 of the General Laws is hereby amended by inserting the following section:--

Section 4A. Whenever the mother of a child born out of wedlock has surrendered the child in accordance with section two of this chapter, notice of such surrender and a right to petition for adoption shall be afforded to any person who, prior to such surrender, has filed a declaration seeking to assume the responsibilities of fatherhood, hereafter referred to as

H21

"Paternal Responsibility Claim". The Paternal Responsibility Claim shall be filed with the department of public welfare on a form to be devised by that agency. Such filing constitutes an admission of paternity.

Any person or agency receiving a child for the purpose of adoption shall search the Paternal Responsibility Claim on file with the department, and if such a claim has been filed with respect to such a child, notify the father by registered mail, at the address stated on said claim, of the receipt of said claim and the county in which said child is residing. A copy of the consent executed by the mother in accordance with section two of this chapter shall be appended to said notice. The father shall have fifteen days from the receipt of said notice to file a petition for adoption or custody of such child in the probate court for the county where the child resides. If he fails to do so, he shall not be entitled to notice of any subsequent proceeding concerning custody, guardianship, or adoption of the child. The court shall consider the case as expeditiously as possible, and, without regard to other potential adoptive parents, shall allow the petition of the father if it finds such an adoption to be in the child's best interest. Any such petition shall be subject to paragraph (E) of section two A of this chapter. Any costs incurred for the temporary care of the child pending the hearing of the father's petition shall be borne by the father.

No other petition for adoption shall be allowed without proof of compliance with this section.



City of Cambridge

5.

IN CITY COUNCIL

March 18, 1974

Councillor Clinton.

ORDERED:

That this City Council go on record as being opposed to House Bill #21, as sponsored by the Executive Office of Children Affairs, which if passed, would give the Commonwealth all regulatory authority and power as to the establishment of halfway houses within the City of Cambridge, and be it further

ORDERED:

That copies of this order be forwarded to Senators McCann and LoPresti along with Representatives Lombardi, Toomey, Flaherty and O'Neil.

City Council *March 18, 1974*
Adopted by the affirmative vote
of *9* members

Paul E. Hsieh City Clerk
CITY CLERK

3 11

2 08

C. Clinton re: City Council opposed to
House Bill # 21.

Copy sent to:
Lopresti, McCann,
Lambardi, Joamey,
G. Laberty, O'Neill &
Mahoney 3/20/74 dl.

ll
ll
ll

In City Council,

March 18, 1974

Add
L. Mahoney to list

Send copies to all
Senators & Reps
From House 1470