



HARVARD LAW SCHOOL  
CHILD ADVOCACY PROGRAM

Elizabeth Bartholet

Morris Wasserstein Professor of Law  
CAP Faculty Director

Crisanne Hazen

Lecturer on Law  
CAP Assistant Director

May 29, 2020

Mr. Francis V. Kenneally, Clerk  
Supreme Judicial Court for the Commonwealth  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

**Re: *Marianne Baptiste Individually and as Legal Guardian and Next Friend to Gregory Williams, Jr. and Gregory Williams, Sr. v. Massachusetts Executive Office of Health and Human Services (FAR-27501) amicus curiae* letter in support of Petitioners' Request for Further Appellate Review**

Dear Mr. Kenneally:

The Child Advocacy Program (CAP) of the Harvard Law School respectfully submits this *amicus curiae* letter in support of the Petitioners' Request for Further Appellate Review, as referenced above. CAP was founded in 2004 by Professor Elizabeth Bartholet who serves as the current Faculty Director. CAP is an academic program dedicated to advancing the rights and well-being of children through advocacy within both the academic community and the community at large. To advance children's interests in academia, CAP teaches family and child law courses at Harvard Law School. These courses include a legal clinic where law students are placed as interns with different legal agencies and organizations dedicated to advancing children's interests, and other academic courses that educate students about issues affecting children. To advance children's interests in the community, CAP sponsors conferences and workshops involving children's rights and issues, engages in policy advocacy through legislative reform and litigation, and supports formation and leadership of advocacy groups for children's rights.

This letter focuses on a critical issue that CAP believes the Supreme Judicial Court should address - establishing an appropriate standard of care for children in non-criminal state custody. CAP believes that the current standard of care owed to children in non-criminal state custody under 42 U.S.C. § 1983 is ambiguous in this jurisdiction, and that that ambiguity has led to a problematic outcome in this case. Specifically, CAP believes that the Appeals Court's application of the Eighth Amendment standard to the circumstances of the current case is inappropriate and sets a dangerous precedent for the standard of care owed to children in state custody.

23 EVERETT STREET, SUITE G-24, CAMBRIDGE, MA 02138

TEL 617.496.1684

E-MAIL [cap@law.harvard.edu](mailto:cap@law.harvard.edu)

WEBSITE [cap.law.harvard.edu](http://cap.law.harvard.edu)



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To remedy this issue, CAP respectfully urges the Court to grant further Appellate Review in the above referenced matter: (1) to clarify that the standard of care owed to children in non-criminal state custody is not defined by the Eighth Amendment; and (2) to establish that the Fourteenth Amendment standard set out in *Youngberg v. Romeo*, 457 U.S. 307 (1982), should be considered the minimum standard to be used in cases involving children in non-criminal state custody.

First, CAP urges the Court to clarify the duty of care owed to children in non-criminal state custody. The Appeals Court in its decision applied the Eighth Amendment standard of “deliberate indifference” to the “unnecessary and wanton infliction of pain” to determine the duty of care owed to the Applicant. This standard of care is not appropriate for children involuntarily committed to non-criminal custodial state care.

In Massachusetts, children do not reach majority until the age of 18. Until that age, children are deemed unable to care for their own basic needs, including in the medical context. Indeed, children must obtain their parents’ consent to do something as mundane as attend a school field trip. In the medical context specifically, children have some rights related to medical decision-making; however, these situations are limited, and the Commonwealth’s default position is that a child’s parents must make health decisions for the child, for reasons primarily related to a child’s lack of judgment and developmental maturity. In support of this legal norm, well-established scientific evidence points to ongoing brain development well past the age of 18, particularly in the area of executive functioning and decision-making. Thus children require responsible adults to care for their well-being enough to ensure that they obtain appropriate care, for instance, in the event of a traumatic brain injury as in this case.

When the state removes a child from his or her home, it is removing them from a social unit designed to care for their needs related to health, safety, and welfare. The goal of the state in removing children from their homes is to provide protection and to improve their well-being--and specifically, when removed to Department of Youth Services (DYS) custody, to rehabilitate. Thus, when DYS takes custody of a child, the state assumes a responsibility to employ a standard of care consistent with that of a nurturing parent. Indeed, the statute provides, “that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings.” G.L. c. 119, § 53. The standard set by the Appeals Court is in conflict with this duty of care.

Further, children in the juvenile justice system do not have the same due process protections as adults in the criminal justice system precisely because the juvenile system is meant



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to be rehabilitative and protective, rather than punitive. These limitations in due process protections create a constitutional responsibility for the state to provide appropriate care for children in its custody. The standard created by the Eighth Amendment is accordingly inappropriate for children in custody pursuant to juvenile justice proceedings. Far more appropriate is the standard adopted by the Supreme Court in cases involving vulnerable individuals, such as mental health patients in state custody. *See Youngberg*, 457 U.S. at 325.

CAP asks that the Court establish that the minimal standard of care owed to children is that set out in *Youngberg v. Romeo*, 457 U.S. 307 (1982) under the Fourteenth Amendment. In *Youngberg*, the Court held that a vulnerable, mentally incapacitated petitioner in non-criminal state custody was owed a higher duty of care by the state than the duty of care set out in the Eighth Amendment. *Youngberg*, 457 U.S. at 325. The Court reasoned that because the petitioner was institutionalized, and solely dependent on the state, the state owed the petitioner an affirmative duty to provide a certain level of care. *Youngberg*, 457 U.S. at 317.

The situation of children in non-criminal state custody is analogous to the situation of the individual in *Youngberg*. Children are inherently vulnerable and unable to provide for themselves. It is because of this unique vulnerability that the state has created a separate juvenile justice system for children, designed to provide a form of care different than adult penal institutions, and specifically designed to rehabilitate. This system denied children many of the due process protections provided adults in the adult criminal justice system, and in exchange is supposed to offer children a benevolent, rehabilitative system oriented to helping them recover from trauma suffered previously and to become responsible adults. The Eighth Amendment standard is inconsistent with the goals of the juvenile justice system, while the *Youngberg* standard helps serve those goals. Therefore, the *Youngberg* standard should be the minimum constitutional standard for the care of children in non-criminal state custody.

Accordingly, CAP respectfully requests that the Court find that the Eighth Amendment standard used by the Appeals Court is not the proper standard, and that the Fourteenth Amendment standard used in *Youngberg* is the minimum standard for children in non-criminal state custody. The Court's consideration of this issue is important for the well-being of all children that are now, or that could potentially be, in state custody in the Commonwealth.

Respectfully submitted,

**Child Advocacy Program**  
**Elizabeth Bartholet, Faculty Director**  
**Crisanne Hazen, Assistant Director**

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