Pierce, Davis & Perritano, LLP Winter 2012 Newsletter

Developments in Municipal Law

Case Comments

Driver for Independent Bussing Contractor Held Not a "State Actor" for Purposes of Section 1983: Santiago v. Puerto Rico, 655 F.3d 61 (1st Cir. 2011).

In Santiago v. Puerto Rico, the First Circuit Court of Appeals ruled that the Commonwealth of Puerto Rico cannot be held liable for the sexual abuse of a special needs student by a privately-employed bus driver. The plaintiff, a six-year-old boy, alleged that he was sexually abused by the bus driver during trips to and from school on October 15, 2003. The plaintiff suffered from profound hearing loss and, pursuant to the Individuals with Disabilities Education Act (IDEA), was under an individualized education plan at a federally-funded public school administered by the Commonwealth. Among the services provided to the plaintiff was specialized transportation to and from classes. The school contracted out the transportation services to a privately-owned bus company. In addition to claims brought against the Commonwealth as administrator of the school, the plaintiff also sued the bus company for civil rights violations under 42 U.S.C. § 1983. The District Court granted the bus company's motion for summary judgment on the grounds that the driver was not acting "under color of state law" as required under Section 1983. The plaintiff appealed and the First Circuit affirmed.

About the Firm

The partners of PD&P bring more than a century of litigation and trial experience to the firm. Our team of experienced and diverse associates is well-trained. We guarantee a quick and thoughtful response to each client's particular needs, as well as creative solutions to litigation.

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Given that the bus company was undisputedly a private entity, the First Circuit analyzed whether the bus driver was a *de facto* state actor under the applicable three tests: (1) the public function test; (2) the state compulsion test; and (3) the nexus/joint action test. Under the first test, the Court reasoned that, since education itself is not a public function under previously-decided First Circuit law (*e.g.*, Logiodice v. Trustees of Me. Cent. Inst., 296 F.3d 22, 26-27 (1st Cir. 2002)), it necessarily follows that an ancillary service to education, such as bussing, likewise cannot be a public function. As for the second state compulsion test, the Court noted that no regulation either compelled or encouraged the assailant's conduct, and there was no evidence that the Commonwealth, in fact, exercised coercive power or control over the conduct alleged. Finally, the Court rejected the plaintiff's claim that the Commonwealth and the bus company were mutually interdependent with respect to the bus company's operations, noting there was no evidence that the company enjoyed special access to public facilities, used public equipment, or shared its profits with the Commonwealth. The evidence showed only that the Commonwealth paid the company to bus its special needs students using public funds. This was not enough, ruled the Court, to support an inference that the two were so entangled that the bus driver could fairly be characterized as a state actor.

Although the Santiago decision involves a private entity, its holding is nevertheless significant for public employers as well since the question of "state action" often arises in the context of whether a private person acted under color of state law for the purposes of imposing *public employer liability* under Section 1983. In describing the circumstances by which a private bus driver's conduct constitutes state action, the First Circuit clarified the reasoning that may one day apply to a Section 1983 claim *against a public employer* based upon the conduct of a privately-employed driver, or indeed upon the conduct of any employee of an independent contractor. With that said, the Santiago decision confirms that the bussing of students will not be viewed as a "public function" by the First Circuit. In short, the public function test will never be applicable in such circumstances. Unless the public employer coerces or encourages a bus driver to violate the victim's rights, or significantly insinuates itself into the bus company's operations, the bus company (not the public employer) will be driving the bus for Section 1983 purposes.

Leasing of Apartments to College Students Held in Violation of Lodging House Statute: City of Worcester v. College Hill Properties, LLC, 80 Mass. App. Ct. 757 (2011).

The Massachusetts Appeals Court recently upheld permanent injunctions and civil contempt fines issued against the operators of five unlicensed lodging houses located within one block of the College of the Holy Cross. In 1990, Worcester adopted G.L. c. 148, § 26H, requiring lodging houses to be equipped with sprinkler systems. Despite the fact that their multi-unit properties were not so equipped, the defendants leased several units in each property to four or more unrelated college students. After defendants defied cease and desist orders issued by the city Department of Inspectional Services, Worcester applied for relief to the Worcester Housing Court which, in turn, issued preliminary injunctions ordering defendants to reduce the number of unrelated adult occupants in each dwelling unit to no more than three. Permanent injunctions and civil contempt fines – ranging from $1,500 to $7,300 per unit – followed defendants' failure to comply with the Housing Court order.

On appeal, defendants argued that their properties did not qualify as "lodging houses" within the meaning of the Massachusetts lodging house licensing statute. G.L. c. 140, §§ 22-32. Under the statute, a "lodging house" is defined as "a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it." G.L. c. 140, § 22. Thus, enforcement of the statutory licensing provisions requires proof of four elements – the property must be (1) a building or structure; (2) where housing accommodations are leased or let; (3) to four or more adults; (4) unrelated to the operator. Here, defendants insisted the city failed to meet its burden of proof because each dwelling unit was occupied by four or more students "living as a family unit," not as lodgers. The students, defendants claimed, were "tenants whose living arrangements formed a single housekeeping unit, akin to a family within the meaning of a local zoning ordinance."

The Appeals Court refused to follow this path, largely for fear of where it might lead. Declining to accept guidance from zoning law when interpreting a licensing provision, the Appeals Court did not view the issue as a particularly close one. "Though the line between a lodging house, single housekeeping unit, and group home may not always be easy to discern . . ., we have no doubt that four or more unrelated adults, sharing housing while attending college, is not an arrangement that lends itself to the formation of a stable and durable household." The Housing Court's decision that the licensing statute applied to defendants' properties, ruled the Appeals Court, was consistent with the purpose of the statute – *i.e.*, "to assure such facilities are safe, sanitary, habitable, and orderly." Moreover, the decision below was supported by substantial evidence and unmarred by legal error. Accordingly, the final judgments and orders of contempt were affirmed.

With over one hundred public and private colleges and universities in Massachusetts, local property owners are often tempted to rent their units and apartments to resident students. Still, they cannot do so in defiance of local ordinances or statutory protections. And, certainly, absent a mandate from the Legislature, any attempts by property owners to circumvent the long-standing lodging house licensing system will not be tolerated by the Courts.

Town Held Not Liable For Suicide of Detainee After Release From Police Custody: Coscia v. Town of Pembroke, 659 F.3d 37 (1st Cir. 2011).

The First Circuit Court of Appeals recently reversed a District Court decision (reported in our Fall 2010 newsletter) and dismissed plaintiff's civil rights action on the grounds that the defendants did not violate the Due Process Clause of the Fourteenth Amendment by failing to prevent the suicide of Jason Coscia fourteen hours after his release from the Pembroke Police Department. The decision was authored by retired Associate Justice of the United States Supreme Court, David H. Souter.

On December 9, 2007, Jason Coscia was involved in a single-car accident. Pembroke police subsequently arrested Coscia and transported him to the police station. During the ride, Coscia told police he wanted to kill himself and intended to do so by jumping in front of a train. Once in his cell, Coscia repeated his plans to end his life by any means possible. He then attempted to bite off his handcuffs, kick the walls, and lick an electrical outlet. Police officers placed leg restraints on Coscia and completed a suicide evaluation form, concluding the detainee presented a "very high risk" of committing suicide. The Police Chief allegedly learned of the situation and Coscia's statements, but took no action. At 6:00 p.m., police released Coscia from custody without ever requesting or obtaining medical

treatment or assistance for him. Fourteen hours later, at 7:50 a.m. the following morning, Coscia stepped in front of a train and ended his life. In their complaint, Coscia's family claimed that "[t]he failure of the defendants to take appropriate action to have Jason Coscia evaluated by medical professionals caused his death by suicide."

Coscia's estate brought a civil rights action against the Pembroke officers and Police Chief claiming defendants were deliberately indifferent to the decedent's medical needs while he was in police custody in violation of the Due Process Clause of the Fourteenth Amendment. The estate also brought a Section 1983 claim against the Town for failing to train its officers in suicide prevention. The defendants moved for judgment on the pleadings on the grounds that Coscia had no constitutional right to protection from harm while *outside* of police custody, that the individual police officers were entitled to qualified immunity, and that no Monell claim for municipal liability was available as against the Town. The District Court denied the motion for judgment on the pleadings but, on appeal, the First Circuit reversed.

The First Circuit initially observed: "[W]e are not dealing with an allegation of harm from a risk created by the state itself or by its local officers." Instead, the "causation alleged" was based on defendants' "failure to prevent the consequences of [Jason's] preexisting suicidal disposition, a failure to intervene in a way that would change him, or his circumstances, for the better in the period after his release." 659 F.3d at 40 (emphasis added). The First Circuit explained, however, that substantive due process rationale "does not extend official protective responsibility as far as plaintiff would take it." While "state tort law may bind the police to a more demanding standard of conduct and a more extended period of liability than the Due Process Clause," no such state law claims were before the Court.

The Coscia decision reaffirms the legal principle (originally announced by the Supreme Court in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989)) that, in the absence of a "special duty" owed to the plaintiff, for example, a detainee still in police custody, the Due Process Clause does not extend to persons who commit suicide or otherwise harm themselves after their release. Lest too much be read into the First Circuit's decision in Coscia, Justice Souter twice cautioned that the Court was not dealing with a situation where the state "created or intensified" the harm suffered by the detainee, suggesting that, under other circumstances, the Court might have reached a different result.

Publically-Employed Nurse Held Immune for Malpractice Under Massachusetts Tort Claims Act: Pedro v. Goldfarb, 28 Mass.L.Rptr. 559, 2011 WL 4056342 (Mass. Super. Ct., Sept. 13, 2011).

In a case defining the contours of the immunity enjoyed by publically-employed nurses against medical malpractice claims, the Middlesex Superior Court recently decided Pedro v. Goldfarb. Judge Edward Leibensperger applied the "direction and control" test previously used to determine the scope of physician immunity under G.L c. 258, § 2, to grant summary judgment to Melissa Abell-Bardsley, a registered nurse employed by Cambridge Hospital. As part of the Cambridge Health Alliance, Cambridge Hospital is considered a public employer within the meaning of the Massachusetts Tort Claims Act ("MTCA"), G.L. c. 258, §§ 1, *et seq.* Abell-Bardsley, an obstetrics nurse at the hospital, was sued (among others) for malpractice by the estate of Brandon Pedro, a young boy who died within days

of his birth. Section 2 of the MTCA provides immunity to public employees who cause injury or death by their negligence while acting within the scope of their employment. Even though Abell-Bardsley admittedly exercised some independent "professional judgment" in her treatment of Brandon, the Court nonetheless held her immune from liability to the child's estate under Section 2 because she was under the "direction and control" of a public employer.

In evaluating Abell-Bardsley's motion, Judge Leibensperger rejected the simplistic notion that she was entitled to personal immunity solely by virtue of her status as a public employee. Public employees are not *automatically* immune for all professional conduct, reasoned the Court, including conduct not undertaken at the "direction and control of the employer." Nurses, like doctors, are members of a profession that frequently requires "a high level of skill, training and independent judgment." Along these lines, Abell-Bardsley's co-defendant, Dr. Miriam Goldfarb, testified at her deposition that, while the decisions regarding Brandon's care were the doctor's responsibility, attending nurses in the obstetrics unit frequently exercised professional judgment in adjusting the levels of the drug Pitocin that she (Dr. Goldfarb) had prescribed to the mother. Conversely, the Court cautioned that the exercise of some modicum of professional judgment by a nurse does not necessarily preclude a finding of immunity. Relying on a case involving physician immunity, Williams v. Hartman, 413 Mass. 398, 400 (1992), the Court held that "in a particular instance of conduct by an agent of a public employer, it is a question of fact whether there was an exercise of direction and control by the employer over the agent's actions." The Court continued that, where the relevant facts bearing on this question are undisputed, "summary judgment is appropriate."

In finding Abell-Bardsley immune from plaintiffs' claims, Judge Leibensperger noted a number of factors which indicated that, at all material times, Abell-Bardsley was under the "direction and control" of her employer, Cambridge Hospital. Specifically, she (1) was paid an hourly wage; (2) was subject to the supervision of a Nurse Manager and the Director of Nursing; (3) subjectively believed, at all times, that she was subject to the control of her employer; (4) did not have any private patients, could not admit her own patients and did not bill patients; and (5) her pay was not affected by the number of patients she saw. The Court contrasted Abell-Bardsley's circumstances with those in which physicians controlled which patients they saw, engaged in private employment and/or practiced medicine outside the direction and control of a public employer. Finally, the Court noted that, "[t]he exercise of independent professional judgment … does not, by itself, mandate a finding that the physician is outside the direction and control of his public employer." McNamara v. Honeyman, 406 Mass. 43, 48 (1989). Furthermore, "to deny summary judgment on the sole basis that a nurse exercised professional judgment would create an exception that would swallow the rule of immunity."

PD&P Decisions & Jury Verdicts

Town Held Immune From Recklessness Claim Due to Plaintiffs' Failure to Make Presentment Under Massachusetts Tort Claims Act: Herman v. Town of Needham, NOCV2009-00684 (Mass. Super. Ct., July 14, 2011).

PD&P recently obtained summary judgment for the Town of Needham in a personal injury action involving a child who fell from a statue she was climbing on the Town Common. In Herman v. Town of Needham, the plaintiff, then six years old, fractured her arm in a fall from a life-sized statue of adolescent children playing "ring around the rosie" known as the "Circle of Peace." The plaintiff was climbing on the statue in the presence of her father while her family attended an annual outdoor arts festival held on the Common. The festival was comprised of performing and visual artists showcasing their various works and wares. The Town did not charge visitors an admission fee, nor did it collect money from festival sponsors or participants, although attendees could purchase artwork from the vendors. There was evidence the Town knew that children routinely climbed on the statue, but did nothing about it.

The plaintiff presented her claim to the Town as required by the Massachusetts Tort Claims Act ("MTCA"), providing significant details as to how the injury occurred and the various acts or omissions of Town employees that allegedly caused the accident. She claimed the Town negligently designed, maintained and/or placed the statue in a manner that invited children to climb upon it, without taking appropriate precautions to prevent such "hazardous" activity. In her presentment letter, the plaintiff specifically identified negligence as her legal theory of recovery. The Town denied the claim based on the so-called Recreational Use Statute, G.L. c. 21, § 17C, which protects a property owner from liability if such owner makes its property available to the public for recreational (and other) purposes free of charge, and the plaintiff suffers injury while engaged in recreational activity, absent proof of willful, wanton or reckless conduct. After initially bringing suit for negligence only, the plaintiff amended her Complaint to add a count for recklessness. At the close of discovery, the Town moved for summary judgment on the grounds that: 1) plaintiff's negligence claim was barred by the Recreational Use Statute; 2) the Town's alleged misconduct did not rise to the level of recklessness as a matter of law; and 3) plaintiff failed to present her recklessness claim in writing as required under G.L. c. 258, § 4. The Superior Court agreed with the Town on all scores and granted the motion.

The Superior Court's holding that any negligence claim was barred under the Recreational Use Statute was unsurprising, as was its ruling that the Town's alleged misconduct did not rise to the level of recklessness as a matter of law. But the Court's decision regarding plaintiff's failure to make adequate presentment of her recklessness claim was significant, since she admittedly provided substantial detail in her presentment letter regarding both how she was injured and what the Town did or failed to do to cause the accident. In opposition to summary judgment, the plaintiff argued the presentment requirement was satisfied because the Town was able to fully investigate its role in the fall before taking a position on whether to accept, reject or otherwise resolve the claim. The Court, however, agreed with

the Town that, in order to satisfy the purposes behind the presentment requirement, the Town must be able to investigate not only the facts of the claim, but also the Town's liability under the legal theory proposed. The Court held that, by presenting a claim for negligence *only*, the plaintiff did nothing more that present a claim for which the Town had no liability. A reasonably educated official reading this letter would not have realized that the plaintiff was accusing the Town of recklessness.

Plaintiffs often allege recklessness at the eleventh hour purely in an artful attempt to plead around a defense raised under the Recreational Use Statute. The Herman ruling provides a useful tool to municipal defendants in combating such last-minute maneuvers of form over substance. Presentment letters rarely contain adequate detail to place a municipality on notice of a claim for willful, wanton or reckless conduct; they ordinarily present claims of only negligence. According to Judge Thomas Connors (author of the Herman decision), such an omission will prove fatal to a claim asserted under the Recreational Use Statute.

First Circuit Court of Appeals Holds Police Officers Entitled To Qualified Immunity: Eldredge v. Town of Falmouth, 662 F.3d 100 (1st Cir. 2011).

PD&P recently earned a favorable decision from First Circuit Court of Appeals. In Eldredge v. Town of Falmouth, a pair of police officers was accused of several tort and civil rights violations stemming from a collision between the pedestrian-plaintiff and a police cruiser en route to a domestic abuse call. On June 24, 2009, at approximately 11:00 p.m., the Falmouth Police Department received a frantic call from a woman being accosted by her raging boyfriend. Three Falmouth patrolmen responded to the call in separate cruisers, each with lights and sirens activated. One-half mile from the caller's home, the first cruiser suddenly slowed to question the plaintiff who was walking beside the road but not involved in the 911 call. As he slowed, the officer in the lead cruiser shouted to plaintiff: "Stand right there!" Unaware of the sudden deceleration of the cruiser in front of him, the second cruiser glanced off the back of the lead cruiser and struck the plaintiff, launching him 70 feet through the air. The plaintiff suffered serious injuries as a result of the collision.

The plaintiff filed suit against the responding officers for negligence and civil rights violations under 42 U.S.C. § 1983 and G.L. c. 12, §§ 11H & 11I (the Massachusetts Civil Rights Act). Specifically, plaintiff argued that the combined efforts of the first and second officer were tantamount to a joint venture that culminated in an unreasonable seizure in violation of the Fourth Amendment

Focusing on plaintiff's federal civil rights claims, the defendants moved to dismiss plaintiff's Complaint under Rule 12(b)(6), arguing there was no Fourth Amendment violation and, even if there was, the individual officers were entitled to qualified immunity. The United States District Court (Judge William Young presiding) allowed the motion and dismissed the federal civil rights claims. Plaintiff appealed.

The First Circuit noted, at the outset, that an unconstitutional Fourth Amendment seizure requires proof of an "*intentional* acquisition of physical control." Acknowledging there was no set of facts from which one could infer that the operator of the second cruiser intended to seize him, plaintiff argued, nonetheless, that the Court should impute the conduct of the first officer (in initiating an unlawful investigatory stop) to the second. The plaintiff did not match the assailant's description and, in the

nine minutes that elapsed since receipt of the 911 call, could not have walked to the point where he was struck by the responding cruiser. Thus, the first officer's investigatory stop – *i.e.*, "Stand right there!" – was not based on reasonable suspicion and, as a result, unconstitutional. But the Court disagreed. While "these factors may have reduced the likelihood that the plaintiff was the alleged assailant . . ., reasonable suspicion [which is needed to effect an investigatory stop] requires 'sufficient probability, not certainty.'" In due deference to police, the Court held that "when viewed through the lens of an officer making a split-second judgment . . ., we cannot say that [the first officer]'s assessment was so obviously misguided that no reasonable officer could have reached the same conclusion."

As to plaintiff's joint venture theory, the Court added that an officer's participation in a group operation, without more, is insufficient to impute liability for constitutional injuries arising out of that effort. Instead, each officer participating in a "team effort" must have "intentionally engaged in a series of acts that would foreseeably result in some member of the team inflicting constitutional injury." Here, the first and second officer were not intentionally engaged in a concerted effort to seize the plaintiff in violation of the Fourth Amendment. In fact, the second officer did not even know plaintiff was standing beside the road at the time his fellow officer shouted to him. Under such circumstances, no joint venture theory could prevail.

Plaintiff declined to file a petition for a writ of certiorari to the United States Supreme Court but, instead, opted to pursue his state law claims in Superior Court.

School Officials Held Not Liable For Defamation While Performing Official Duties: ARCADD, Inc. v. Patterson, 80 Mass. App. Ct. 1111 (2011).

PD&P recently earned an Appeals Court victory in ARCADD, Inc. v. Patterson. Plaintiffs were originally retained by the Town of Falmouth to provide architectural services in connection with a multi-million dollar school renovation project. But when the Town attempted to terminate the contract due to multiple project delays, plaintiffs sued the Town for breach of contract. In a subsequent letter to the Massachusetts School Building Authority, the Town's assistant superintendent of finances and human resources explained that the contract was terminated "for cause." Also, while fielding questions at a parent forum convened to address the school renovation issues, the assistant superintendent and School Committee chairman allegedly stated that (1) plaintiffs were "not competent when it came to properly designing the school, managing the project and supervising construction"; (2) the replacement architect "inherited a project that was poorly designed"; and (3) the project would "be in worse shape today if we stuck with the original architect[*i.e.,* plaintiffs.]" Plaintiffs thereafter commenced a separate action for defamation against the assistant superintendent and School Committee chairman.

PD&P moved for summary judgment in the defamation action on several grounds. First, defendants' alleged statements did not rise to the degree of ridicule necessary to establish a claim for defamation. Second, the alleged statements constituted opinions for which plaintiffs could not recover. Third, as public officials, the defendants were conditionally privileged in making such statements in the performance of their official duties. The Middlesex Superior Court agreed and entered summary judgment in favor of the defendants.

In an unpublished Rule 1:28 decision, the Appeals Court affirmed the judgment entered below. The Appeals Court held that "plaintiffs did not present sufficient evidence to counter the defendants' position that the statements made did not rise to the level of defamation," and that the plaintiffs "did not provide anything that could contravene the reasonable inferences that the statements were nonactionable opinions or shielded by conditional privilege." The Supreme Judicial Court of Massachusetts denied ARCADD's request for further appellate review.

Town Held Immune For Fire Department Inspections: Friends of the Plymouth Pound, Inc. v. Town of Plymouth, PLCV2011-00763 (Mass. Super. Ct., Nov. 7, 2011).

PD&P recently prevailed in a suit that arose out of a fund-raising carnival held in the Town of Plymouth. Town officials issued permits for carnival operations subject to several conditions, including the condition that no carnival workers could sleep in overnight trailers or mobile bunkhouses that did not meet applicable fire safety standards. After the carnival opened, a Fire Department inspection revealed that the mobile bunkhouses in which the carnival workers intended to sleep were not equipped with fire sprinklers as mandated by the state fire code. The Fire Department accordingly ordered the removal of the mobile bunkhouses from the carnival site under the threat of closure. Carnival workers begrudgingly complied and, thereafter, were forced to secure alternative accommodations.

After the carnival ended, the sponsor brought suit against the Town of Plymouth for wrongfully threatening to shut the carnival down and for forcing the carnival workers to incur motel and other related expenses. On behalf of the Town, PD&P moved to dismiss plaintiff's Complaint on the grounds of municipal immunity under the Massachusetts Tort Claims Act ("MTCA"), G.L. c. 258, §§ 1, *et seq*. Specifically, Section 10(e) of the MTCA protects a public employer from any claim "based upon the issuance, denial, suspension or revocation or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization." In its Motion to Dismiss, the Town argued that the alleged conduct of its employees fell squarely within the protection of Section 10(e) because the actions in question could all traced back to the issuance of the original permit. Plaintiff argued, in opposition, that the conduct of the Fire Department, as opposed to the issuance of the permits, was the actual cause of the harm and, therefore, dismissal under Section 10(e) was inappropriate.

The Superior Court agreed with the Town and allowed its Motion to Dismiss, noting that plaintiff's allegations were all "based upon" the issuance of a permit within the meaning of G.L. c. 258. § 10(e). In light of the limited number of decisions rendered to date interpreting the immunity preserved in Section 10(e), the Friends of the Plymouth Pound case should prove helpful in defending future claims in which suit is brought against a municipality based upon the issuance, denial, etc., of any permit, license or similar authorization.

Legislative Update

Massachusetts Passes Transgender Equal Rights Bill.

On November 23, 2011, Massachusetts Governor Deval Patrick signed into law a bill intended to protect transgender individuals from discrimination in education, housing, employment and credit. The bill also modified the state's hate crime laws to protect transgender individuals. The bill includes gender identity under the state's non-discrimination statute, M.G.L. c. 151B, §§ 3, 4 except public accommodations, and amends existing laws to protect people targeted for violence and harassment. The bill adds the following definition to the General Laws of Massachusetts, M.G.L. c. 4, § 7, clause 59:

> "Gender identity" shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person's core identity; provided however, gender-related identity shall not be asserted for improper purpose.

The new law will also increase the state's ability to prosecute criminal conduct in the form of hate crimes against transgender individuals under M.G.L. c. 265, § 39.