

## Custody of Victoria : *A Lesson in Jurisdiction*

In an opinion released on October 21, 2015, the Supreme Judicial Court of Massachusetts dealt with a jurisdictional issue involving an unaccompanied refugee minor. The question was whether Massachusetts had jurisdiction over a custody hearing involving this child when they had been in the state for a limited time. This case is timely considering the news of the increasing amount of refugees worldwide.

Victoria was only 14 years old when she was abused and sexually exploited. After reporting the abuse to a school nurse, she ultimately was taken from her mother and step-father while living in Texas. Local law enforcement referred Victoria to the Department of Homeland Security as she was not a US Citizen or Resident. Homeland Security notified her that she was eligible for benefits under its unaccompanied refugee minors program as a victim of trafficking. Under this program, the child was transferred to Massachusetts from Texas by the Office of Refugee Resettlement. At the time of the transfer, she had been under custody of the Office of Refugee Resettlement for almost two years.

Within three weeks of arrival, the Massachusetts Department of Children and Families filed a petition for custody of Victoria. The issue at trial became whether the court in Massachusetts had jurisdiction over the custody hearing of the child.

In Massachusetts, child custody is governed by the provisions of [G.L. c. 209B](#). In order for the court to exercise jurisdiction to make a custody determination, the court must have one of the following four requirements met:

1. Massachusetts is the child's home state and a "parent or person acting as parent: continues to reside in Massachusetts" Massachusetts G.L.c. 209B, Section 2(a)(1). The child's home state is defined as where the child lived with his parents, parent or a person acting as parent for at least six consecutive months.
2. No other state would have jurisdiction under the first requirement, and it is the best interest of the child to have Massachusetts assume jurisdiction.
3. The child is physically present in Massachusetts and has been abandoned or it is necessary to protect the child from abuse or neglect.
4. No other state would have jurisdiction under 1, 2, or 3, or another state has declined to exercise jurisdiction, and it is the best interest of the child for Massachusetts to assume jurisdiction.

In this case, the child's home state was not in Massachusetts as she had only lived in the Commonwealth for three weeks. Therefore, requirement one would not be met as she had lived in the Commonwealth less than six months.

Requirement two states that no other State would meet the first requirement – was that the case? In Massachusetts, the definition of a parent is broad and includes an "authorized social service agency exercising legal or physical custody of a child." Victoria was in the custody of the Office of Refugee Resettlement for the preceding six months while living in Texas. Therefore, the question becomes does the Massachusetts definition of a parent or "authorized social service agency" extend to Federal Agencies?

The Court found that this definition would only extend to State, and not Federal agencies. Therefore, there was no state which would meet the definition as the child's home state. As the child was receiving treatment and education in Massachusetts and did not have a home State, requirement two would be met. Therefore, the Supreme Judicial Court found that Massachusetts has jurisdiction over the custody proceeding under G.L.c. 209B.