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A Guide to Gathering and Using Legislative History in Massachusetts

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Recommended Citation

Sean J. Kealy, *A Guide to Gathering and Using Legislative History in Massachusetts*, in 97 *Massachusetts Law Review* 46 (2016).

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Citations:

Bluebook 21st ed.

Sean J. Kealy, Guide to Gathering and Using Legislative History in Massachusetts, A, 97 Mass. L. REV. 46 (2016).

ALWD 7th ed.

Sean J. Kealy, Guide to Gathering and Using Legislative History in Massachusetts, A, 97 Mass. L. Rev. 46 (2016).

APA 7th ed.

Kealy, S. J. (2016). Guide to gathering and using legislative history in massachusetts, a. Massachusetts Law Review, 97(3), 46-61.

Chicago 17th ed.

Sean J. Kealy, "Guide to Gathering and Using Legislative History in Massachusetts, A," Massachusetts Law Review 97, no. 3 (February 2016): 46-61

McGill Guide 9th ed.

Sean J. Kealy, "Guide to Gathering and Using Legislative History in Massachusetts, A" (2016) 97:3 Mass L Rev 46.

AGLC 4th ed.

Sean J. Kealy, 'Guide to Gathering and Using Legislative History in Massachusetts, A' (2016) 97(3) Massachusetts Law Review 46

MLA 9th ed.

Kealy, Sean J. "Guide to Gathering and Using Legislative History in Massachusetts, A." Massachusetts Law Review, vol. 97, no. 3, February 2016, pp. 46-61. HeinOnline.

OSCOLA 4th ed.

Sean J. Kealy, 'Guide to Gathering and Using Legislative History in Massachusetts, A' (2016) 97 Mass L Rev 46

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A GUIDE TO GATHERING AND USING LEGISLATIVE HISTORY IN MASSACHUSETTS

By Sean J. Kealy¹

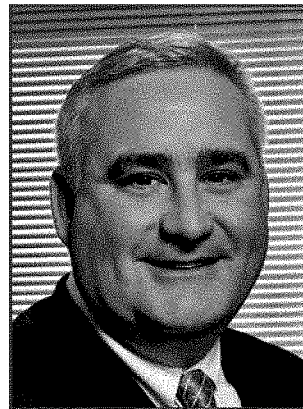
INTRODUCTION

Lawyers must have the ability to interpret statutory language. Whether during criminal or civil litigation, advising a client on recent statutory changes or appearing before an administrative agency, the importance of statutes to the modern legal world is unquestioned. Although some jurists, notably Justice Antonin Scalia, question whether there can be such a thing as “legislative intent” and disregard materials that may be instructive to the court, most jurisdictions not only accept evidence of legislative intent, but seek it out. As Massachusetts Supreme Judicial Court Justice Robert Cordy wrote:

While researching legislative history in Massachusetts can be a tremendous challenge, where a question involving the Legislature’s intent is a close one, the legislative history can often be a decisive factor in determining which side is to prevail. The legislative history and knowing how it supports your position can make the difference between a good argument and a really compelling one.²

Unfortunately, gathering legislative history in Massachusetts is difficult at best. Unlike Congress, Massachusetts does not have anything analogous to the comprehensive *Congressional Record*, informative committee reports, or a systematic archive of relevant records used to draft and justify bills. In fact, finding Massachusetts legislative history is more like a treasure hunt and the previous guides have become dated.³

This article seeks to provide a reliable map for the practitioner seeking useful legislative materials beneath the Gold Dome. The first part of the paper briefly describes the uses of legislative history by federal and state courts and the evidence of legislative intent upon which judges have relied in the past. The second part describes the Massachusetts legislative process that creates evidence of the



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legislature’s and governor’s intent behind a law. This part also offers a guide to the most common citations a researcher may find in a legislative search. Part three covers how to find legislative history in Massachusetts, including: the available sources of information; reconstructing a complete procedural history for a statute; and a description of the evidence that may be helpful and where to find that information. Finally, there are two appendices, one with a checklist for finding legislative history and the other a list of useful contact information.

I. THE USE OF LEGISLATIVE HISTORY

Amazingly, in more than 300 years of American jurisprudence, there has never been an agreed-upon method for how judges should interpret statutory language. Some judges, most significantly Justice Scalia, limit their inquiries to the statutory language passed by the legislature, as understood by the rest of the legal code and the traditional canons of construction. Justice Scalia argues that it is useless for a judge to try and understand the mind or “psychoanalyze” the legislature, and that historical legislative material not actually voted

1. My sincere thanks to Stacey Bloom, Bette Siegel, Josh Krintzman, Stephen Donweber, Zachary Hillman, Alex Forney, Patricia Jo, Jennifer Yoo and Sarah Simkin for their assistance in researching and editing this article. I would also like to thank Senator Cynthia Stone Creem for giving me the opportunity to work in the General Court as counsel to the Criminal Justice and Revenue committees.

2. Justice Robert J. Cordy, “A Practical View From The Appellate Bench,” 46 BOSTON BAR J. 8, 9 (2002).

3. The two most recent guides to gathering legislative history in Massachusetts

were written in 1982 and 2002. The 1982 document was produced by the now defunct Legislative Research Bureau. *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. (1982). The Massachusetts State Library, a wonderful resource located in the State House, produced *The Massachusetts Legislative History Guide* in 2002, which cites *Determination of Legislative Intent* extensively. State Library of Mass., *The Mass. Legislative History Guide* (2002), <http://archives.lib.state.ma.us/handle/2452/35648>. Obviously, much has changed in the past 34 and 14 years respectively — not the least of which is the explosion of materials found online.

upon is extraneous at best, and misleading at worst.⁴ One could argue that judges with little or no experience in the legislative process may overlook relevant evidence of legislative history or give undue weight to some other bit of the legislative record.⁵

A. Massachusetts Practice

Most Massachusetts courts will start the interpretive process by attempting to determine the plain meaning of the statutory language.⁶ The Massachusetts Supreme Judicial Court has held that where the statutory language is clear and not open to multiple interpretations, there is no need to consider extrinsic aids.⁷ Still, a strict textualist reading of a statute is often criticized by scholars who contend that it allows great latitude to judges, especially when paired with the traditional canons of construction, to make the law say what they want it to say rather than to effectuate the will of the legislature.⁸

Few judges, however, are strict adherents to Justice Scalia's

philosophy of textualism; Justices Frankfurter and Breyer have been among the majority of judges who will rely on available historical materials if the plain meaning of the statute is unclear.⁹ Professor William Eskridge recently predicted that courts will rely even more on legislative history materials as technology makes state legislative materials more readily available.¹⁰

Massachusetts courts are clearly empowered to look for "reliable guideposts" that will help them construe legislative intent.¹¹ These extrinsic aids can be extremely broad, and can include "the statute's 'progression through the legislative body, the history of the times, prior legislation, contemporary customs and conditions and the system of positive law of which they are part.'" In some instances, the court may make "an especially thorough inquiry into legislative motive, including 'such circumstantial and direct evidence of intent as may be available.'" In other cases, the court has looked for legislative intent by considering "the cause of [the law's] enactment, the mischief or imperfection to be remedied and the main object to

4. Justice Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law*, 29-36 (Princeton University Press, 1997). Rather than relying on legislative history, Justice Scalia prefers a textualist reading of statutes. *Id.* at 23-25. Justice Scalia quotes with approval a concurrence by Justice Robert H. Jackson: "When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of congressmen and act according to the impression we think this history should have made on them. Never having been a congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute." *Id.* at 30-31 (quoting *United States v. Public Utils. Comm'n of Cal.*, 345 U.S. 295, 319 (1953) (Jackson, J., concurring)). Justice Scalia frequently restates his opposition to the use of legislative history. See, e.g., *Graham County Soil & Water Conservation District v. U.S. ex rel. Wilson*, 559 U.S. 280, 302 (2010) ("[I]t is utterly irrelevant whether the Members of Congress intended otherwise . . . except to the extent that intent is manifested in the only remnant of 'history' that bears the unanimous endorsement of the majority in each House: the text of the enrolled bill that became law." (emphasis in original)). Others argue that legislative history may be manufactured and is, therefore, inherently deceptive. For example, it is often noted that a great deal of what is printed in the *Congressional Record* was never spoken on the floor of Congress but was inserted afterward. The statements or material appear to be part of the debate, but there was, in fact, no opportunity to question or debate the material in an open session of a chamber. See generally *Gregg v. Barrett*, 771 F.2d. 539, 540-41 (1st Cir. 1985) (discussing the Revise Privilege that allows members of Congress to insert or revise floor comments in the *Congressional Record*).

5. See *supra* note 4.

6. See, e.g., *Finch v. Commonwealth Health Ins. Connector Auth'y*, 461 Mass. 232, 236 (2012) ("The Legislature's intent is 'found most obviously in the words of the law itself, interpreted according to their ordinary and approved usage.'" (quoting *Suffolk Constr. Co. v. Division of Capital Asset Mgmt.* 449 Mass. 444, 454 (2007))). See also *Mammoet USA Inc. v. Entergy Nuclear Generation Co.*, 64 Mass. App. Ct. 37, 41 (2005) ("As always in such matters, our goal is to ascertain the Legislature's intent in using that term, and any analysis must begin with the actual language of the statute."). At other times, however, courts see historical materials as the best indicator of legislative meaning. See, e.g., *Lowney v. Commissioner of Revenue*, 67 Mass. App. Ct. 718, 721 (2006) ("The first point of inquiry, legislative history, provides no guidance."); *Metropolitan Prop. and Cas. Ins. Co. v. Blue Cross and Blue Shield of Mass. Inc.*, 451 Mass. 389, 393 n.6 (2008) (regarding conflicting positions on the original purpose of the statute, the Supreme Judicial Court found "no legislative history," or any legislative purpose underlying the statute and thus its "analysis must focus instead on the plain language of the relevant statutes.").

7. *Commonwealth v. Perella*, 464 Mass. 274, 276 (2013) (quoting *Commonwealth v. Millican*, 449 Mass. 298, 300 (2007) (the court focuses first on the

language of the statute, which provides "the primary source of insight into the intent of the Legislature."); *Millican*, 449 Mass. at 300-01 (court does "not look to extrinsic sources to vary the plain meaning of a clear, unambiguous statute unless a literal construction would yield an absurd or unworkable result").

8. See William Popkin, *Materials on Legislation: Political Language and the Political Process*, 541-42 (5th ed. Foundation Press, 2009) ("Textualism . . . seems to transform statutory interpretation into a kind of exercise in judicial ingenuity. The textualist judge treats questions of interpretation like a puzzle to which it is assumed there is one right answer. The task is to assemble the various pieces of linguistic data, dictionary definitions, and canons into the best (most coherent, most explanatory) account of the meaning of the statute. This exercise places a great premium on cleverness. In one case the outcome turns on the placement of a comma, in another on the inconsistency between a comma and rules of grammar, in a third on the conflict between quotation marks and the language of the text.") (quoting Thomas W. Merrill, "Textualism and the Future of the Chevron Doctrine," 72 WASH. U.L.Q. 351, 372 (1994)).

9. Justice Felix Frankfurter stated, "If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded." Justice Felix Frankfurter, "Some Reflections on the Reading of Statutes," 47 COLUMBIA LAW REV. 527, 541 (1947) ("Reflections"). Justice Frankfurter points out that this attitude was shared by Chief Justice John Marshall who wrote, "'Where the mind labours to discover the design of the legislature, it seizes everything from which aid can be derived.'" *Id.* at 542 (quoting *United States v. Fisher*, 6 U.S. 358, 386 (1805)). Justice Frankfurter also states that legislative history is useful because "a page of history is worth a volume of logic." "Reflections" at 543 (quoting *New York Trust Co. v. Eisner*, 256 US 345, 349 (1921)). Although Justice Stephen G. Breyer cautions against the potential abuses of legislative history, he supports its potential uses. See Stephen Breyer, "On the Uses of Legislative History in Interpreting Statutes," 65 S. CAL. L. REV. 845, 847 (1992).

10. William Eskridge, "Keynote Address at the 2nd Annual International Conference on Legislative Drafting and Law Reform" (May 5, 2014).

11. *Sheehan v. Weaver*, 467 Mass. 734 (2014); *City of Worcester v. College Hill Properties LLC*, 465 Mass. 134 (2013); *Finch*, 461 Mass. at 236; 81 Spooner Rd. LLC v. Brookline 452 Mass. 109, 115 (2008).

12. *Finch v. Comm. Health Ins. Connector Authority*, 461 Mass. 232, 237 (2012) (quoting *Suffolk Constr. Co. v. Division of Capital Asset Mgt.*, 449 Mass. 444, 454 (2007)).

13. *Finch*, 461 Mass. at 237 (quoting *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999)); *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). In *Finch*, the Supreme Judicial Court determined whether a change to the Massachusetts health insurance laws was discriminatory toward resident aliens and was attempting to determine the legislature's intent as part of a strict scrutiny test of the law. 461 Mass. at 242-43.

be accomplished, to the end that the purpose of its framers may be effectuated.¹⁴

At times, the use of extrinsic aids in Massachusetts can be extensive and can even be used to overcome a plain reading of the statute. In *Finch v. Commonwealth Health Insurance Connector*, the Supreme Judicial Court held that, although the plain text might have supported the commonwealth's argument that a change to the state's health laws was not discriminatory, the legislative history provided "pervasive evidence of legislative purpose" to the contrary.¹⁵ The court cited a bill reported by the Senate Ways and Means Committee;¹⁶ the comments of the Senate Ways and Means Committee chair as reported in the *Boston Globe*;¹⁷ the conference committee report;¹⁸ the governor's message and amendment on the pertinent section;¹⁹ changes made to the bill as a result of the governor's message;²⁰ the governor's signing statement;²¹ the lack of statements within the legislative record that supported the commonwealth's theory of the case;²² and the evolution of successor statutes.²³ The court, therefore, effectively used a variety of aids to determine legislative intent and overcome a possible plain meaning reading of the statute.

The First Circuit Court of Appeals has also relied upon Massachusetts legislative history if it is available. The "abortion clinic buffer zone" cases provide an example of legislative history's aiding the court's decision. In the two *McGuire v. Reilly* cases,²⁴ although the court stated that the "Legislature's subjective intent is both unknown and unknowable,"²⁵ the court looked to the available legislative record to determine if a statute restricting protests near reproductive health centers met the strict scrutiny requirements for restrictions on First and Fourteenth Amendment rights.²⁶ The detailed legislative history was largely provided in an amicus brief submitted by one of the bill's sponsors, Senator Cynthia Creem.²⁷ The court relied upon the original bill filed in 1999; testimony from the Criminal Justice Committee hearing on the bill that established a history of harassment and intimidation near reproductive health clinics; written statements from bill sponsors to the committee,

explaining the need for a new statute; an advisory opinion by the Massachusetts Supreme Judicial Court on the constitutionality of the Senate's proposal;²⁸ and the Senate's engrossed bill, which included an extensive "findings and purposes" section. In 2007, the legislature amended the buffer zone law to address problems with enforcement identified by law enforcement agencies.²⁹ Once again, in *McCullen v. Coakley*,³⁰ the federal courts decided whether the statute violated protestors' rights to free speech. In those cases, the District Court relied upon transcripts from the Joint Committee on Public Safety and Homeland Security's hearing on the bill;³¹ the act's emergency preamble stating that public safety required the law to take effect immediately;³² and a written opinion by the Attorney General to the Boston and Brookline Police describing the Act's modification to the law.³³ The First Circuit Court of Appeals likewise cited hearing testimony from law enforcement officers, clinic workers, and legislators describing the difficulties enforcing the 1999 statute and a lack of arrests.³⁴

B. Specific Evidence of Legislative Intent

What extrinsic evidence may be offered to prove legislative intent? The answer depends on the situation. As Justice Frankfurter wrote,

No item of evidence has a fixed or even average weight. One or another may be decisive in one set of circumstances, while of little value elsewhere. A painstaking, detailed report by a Senate Committee bearing directly on the immediate question may settle the matter. A loose statement even by a chairman of a committee, made impromptu in the heat of debate, less informing in cold type than when heard on the floor, will hardly be accorded the weight of an encyclical.³⁵

Courts have previously relied on the following types of evidence:

- court decisions from other jurisdictions;³⁶

14. *Zaleski v. Zaleski*, 469 Mass. 230, 239 (2014) (quoting *Board of Educ. v. Assessor of Worcester*, 368 Mass. 511, 513 (1975)). See also *Hanlon v. Rollins*, 286 Mass. 444, 447 (1934); *Kobrin v. Gastfriend*, 443 Mass. 327, 337-38 (2005) (citing *Triplett v. Oxford*, 439 Mass. 720, 723 (2003)); *Quincy City Hosp. v. Rate Setting Comm'n*, 406 Mass. 431, 443 (1990) ("As is our obligation, we have given meaning to all of the statute's words in the context of the legislative history in order to effectuate the intent of the Legislature.")

15. *Finch*, 461 Mass. at 239.

16. *Id.* (citing S. Doc. 3, 186th Gen. Ct., 1st Sess. at §77 (Mass. 2009)).

17. *Id.* (citing Kay Lazar, "Senate's Health Cuts Stir Outrage," *BOSTON GLOBE*, May 15, 2009, at A1). The court, however, noted the limited value of the comments of a single legislator outside of the legislative record. *Finch*, 461 Mass. at 240 n.6.

18. *Finch v. Comm. Health Ins. Connector Auth'y*, 461 Mass. 232, 241 (2012) (citing H. Doc. 4129, 186th Gen. Ct., 1st Sess., at §121 (Mass. 2009)).

19. *Finch*, 461 Mass. at 241 (citing H. Doc. 4139, 186th Den. Ct., 1st Sess. (Mass. 2009)). In Massachusetts, the governor does not have to either veto or sign a bill enacted by the legislature, but may return the bill with suggested changes and a message explaining his objections or proposed changes. See MASS. CONST. pt. II, Art. II, amended by Art. LVI and Art. XC, §3.

20. *Finch*, 461 Mass. at 241.

21. *Id.* at 241-42 (citing H. Doc. 4206, 186th Gen. Ct., 1st Sess. (Mass. 2009)).

22. *Id.* at 242 ("Neither the governor, the chairman of the Senate Ways and Means Committee, nor any other legislator made reference to the national immigration policy of PRWORA.")

23. *Id.* at 242 n.8 (citing a later governor's message that supported the theory that the legislature was pursuing fiscal ends in the previous legislation.)

24. *McGuire v. Reilly*, 260 F.3d 36 (1st Cir. 2001) (*McGuire I*); *McGuire v. Reilly*, 386 F.3d 45 (1st Cir. 2004) (*McGuire II*).

25. *McGuire I*, 260 F.3d at 47.

26. *Id.*

27. *Id.* Senator Creem and her staff collected and maintained a detailed history of the statute, in part, because she believed the statute would be litigated in state and federal court.

28. *Opinion of the Justices to the Senate*, 430 Mass. 1205 (2000).

29. See "An Act Relative to Public Safety at Reproductive Health Care Facilities," ch. 155 2007 Mass. Acts (codified at MASS. GEN. LAWS ch. 266, §120E 1/2).

30. *McCullen v. Coakley*, 571 F.3d 167 (1st Cir. 2009) (*McCullen II*); *McCullen v. Coakley*, 573 F. Supp. 2d 382 (D. Mass. 2008) (*McCullen I*).

31. *Id.* at 400.

32. *Id.* at 399.

33. *Id.* at 400.

34. *McCullen II*, 571 F.3d at 173.

35. "Reflections", *supra* note 9, at 543.

36. *Hunnell's Case*, 220 Mass. 351, 353-54 (1915) (when a statute is substantially taken from the statute of another state, the decisions of that state's courts will be "strongly persuasive"); *Scaccia v. State Ethics Comm'n*, 431 Mass. 351, 354-55 (2000) (using U.S. Supreme Court's interpretation of the federal gratuity statute, which was modeled after Massachusetts's statute).

- titles;³⁷
- documents created during the legislative process;³⁸
- bill analysis;³⁹
- floor statements of legislators;⁴⁰
- amendments during the legislative process;⁴¹
- preambles;⁴²
- findings and purposes sections;⁴³
- governor's messages;⁴⁴
- governor's signing statements;⁴⁵
- the lack of statements by legislators or the governor that support alternative theories of legislative intent;⁴⁶
- reports of the Legislative Research Bureau;⁴⁷

37. *Massachusetts Insurers Industry Fund v. Safety Ins. Co.*, 439 Mass. 309, 315 (2003) (citation omitted) (“[T]he title of an act is often helpful in interpreting the [language] of a statute, [although] it is not conclusive.”); *Opinion of the Justices*, 309 Mass. 631, 638 (1941) (citation omitted) (“A title is [in] a legal sense part of every statute and may be considered in determining its construction.”); *Buccaneer Dev. Inc. v. Zoning Bd. of Appeals of Lenox*, 83 Mass. App. Ct. 40, 43 (2012) (“Legislative purpose of [a statute] is readily apparent from its title and its text.”); *but see Kaplan v. Contributory Ret. Appeal Bd.*, 51 Mass. App. Ct. 201, 205 (2001) (title, headings and captions are accorded limited weight in statutory construction); *American Family Life Assurance Co. v. Commissioner of Ins.*, 388 Mass. 468, 474 (1983). The federal practice is that the title should always be considered, although it may not limit the plain meaning of the text. *See Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947); *United States v. Ozuna-Cabrera*, 663 F.3d 496, 500 n. 3 (1st Cir. 2011); *Berniger v. Meadow Green-Wildcat Corp.*, 945 F.2d 4, 9 (1st Cir. 1991) (“It is well established that a statute’s title may aid in construing any ambiguities in a statute.”).

38. *Commonwealth v. Morse*, 468 Mass. 360, 368-69 (2014) (relying on a Joint Committee on Public Safety report to determine the scope of the crime of misleading a police officer); *City of Worcester v. College Hill Properties LLC*, 465 Mass. 134, 134 (2013) (citing a Public Health Committee report providing evidence of legislative intent); *Finch v. Comm. Health Ins. Connector Auth’y*, 461 Mass. 232, 239-40 (2012) (*citing* S. Doc. 3, 186th Gen. Ct., 1st Sess., at §77 (Mass. 2009), amendments to bill from the Senate Ways and Means Committee); *Board of Appeals of Hanover v. Hous. Appeals Comm. in the Dep’t of Cmty. Affairs*, 363 Mass. 339, 350-52 (1973) (court relied upon a report issued by the legislature’s Committee on Urban Affairs explaining the bill’s purpose); *Hood Rubber Co. v. Commissioner of Corps. and Taxation*, 268 Mass. 355, 358 (1929) (report of a legislative committee may be used to show legislative intent).

39. *In re Goldman*, 192 B.R. 1, 5-6 (D. Mass. 1996); *Wilcox v. Riverside Park Enters. Inc.*, 399 Mass. 533, 539 n.14 (1987) (*citing* C. Dallas Sands & Norman J. Singer, *Sutherland’s Statutes and Statutory Construction*, 2A §49.08 (4th ed. 1984); Mass. Legislative Research Bureau, “Determination of Legislative Intent,” H. 172-5882, 2nd Sess. at 46-47 (1982) (*citing* letter from Attorney General Edward W. Brooke to Legislative Research Bureau (Dec. 29, 1966)). The Attorney General’s 1966 opinion was limited to the “daily summaries” prepared by the Legislative Research Council and made available to all members of the legislature. Attorney General Brooke relied upon the following cases in coming to his conclusion: *Milton v. Metropolitan District Comm.*, 342 Mass. 222, 223 (1961); *Plunkett v. Old Colony Trust Co.*, 233 Mass. 471, 474 (1919); *City of New Bedford v. New Bedford, Woods Hole, Martha’s Vineyard & Nantucket S.S. Auth’y*, 330 Mass. 422, 429 (1953). He also relied on J.G. Sutherland & Frank E. Horack Jr., *Sutherland Statutory Construction*, §§5007, 5008, 5010 (3rd ed. 1943). Attorney General Brooke, however, stated that he could not comment on how much probative value the evidence would have, as that would be determined by “the circumstances surrounding the need, if any, for extrinsic aid to interpretation.”

The evidentiary value of the various summaries found in a committee’s files may vary, however. At times advocacy groups — including corporations, nonprofit organizations, unions, trade associations, and executive agencies — will produce documents with a clear point of view and one-sided opinions on various provisions of the bill. This information may be very pertinent to how the legislature saw the state of the law at the time or the circumstances that required a legislative fix. These documents, however, may also contain biased opinions on the law or effects of potential legislation. Summaries prepared by legislative staff should, however, have the greatest evidentiary value.

40. *Bd. of Appeals of Hanover*, 363 Mass. at 353 n.13 (relying upon a statement

made in debate by an individual legislator as quoted by the State House News Service (SHNS)). The Legislative Research Bureau report points out that relying on floor statements reported by the privately operated SHNS is “unusual.” *Mass. H. 172-5882* at 44. At other times, the court has held that statements made and opinions held by individual legislators are an inappropriate source from which to discover the intent of legislation or the meaning of the statute’s language, even when the meaning is not clear. *McKenney v. Commission on Judicial Conduct*, 377 Mass. 790, 799 (1979).

41. *Finch*, 461 Mass. at 240 (court relied upon revised language contained in a conference committee report; amendments proposed by the governor; and the partial adoption of those amendments); *Passatempo v. McMenimen*, 461 Mass. 279, 288-89 (2012) (court relied on addition of certain provisions in third and final readings); *Bd. of Appeals of Hanover*, 363 Mass. at 497 (court relied upon an examination of the changes incorporated in the House Committee on Ways and Means redraft).

42. An emergency preamble is a procedural mechanism used by the legislature to make a law effective immediately, rather than 90 days after it has been signed by the governor. *See* art. 48, “The Referendum, of the Constitution of the Commonwealth;” *Vittands v. Sidduth*, 41 Mass. App. Ct. 515, 518 (1996). Although the preamble often contains a very short or broadly worded rationale for the need to declare the statute an emergency measure, courts have used them to help interpret statutory language. *See McCullen v. Coakley*, 571 F.3d 167, 176 (1st Cir. 2009); *Commonwealth v. Millican*, 449 Mass. 298, 305 (2007). Although statements regarding the scope or purpose of an act found in a preamble “may aid in the construction of doubtful clauses,” the preamble cannot control the plain language of the statute. *Brennan v. The Governor*, 405 Mass. 390, 395-96 (1989). Along these lines, a general statement in the preamble that the law is meant to increase criminal penalties does not mean that all of the statute’s provisions should be seen as penal in nature. *Gordon v. Registry of Motor Vehicles*, 75 Mass. App. Ct. 47, 51 (2009) (“General statements in the preamble of a statute do not control its specific provisions.”).

43. Findings of fact made by the legislature within a statute have precedential value, and the court is not free to hold a law inapplicable to a case because it disagrees with the fact determinations on which the rule was explicitly or implicitly based. *Massachusetts Med. Soc’y v. Dukakis*, 637 F. Supp. 684, 689-90 (Mass. 1989).

44. *Finch v. Comm. Health Ins. Connector Authority*, 461 Mass. 232, 241 n.7 (2012) (the court stated that it will “routinely look to the governor’s message to assist our interpretation of statute”) (*citing* *Strasnick v. Board of Registration in Pharm.*, 408 Mass. 654, 659 (1990)); *Boston v. Mass. Bay Transp. Auth’y*, 373 Mass. 819, 826 n.9 (1977).

45. *Finch*, 461 Mass. at 240-41.

46. *Id.* at 242 (“Neither the governor, the chairman of the Senate Ways and Means Committee, nor any other legislator made reference to the national immigration policy of PRWORA.”).

47. *Bloom v. City of Worcester*, 363 Mass. 136, 150 n.9 (1973) (referring to two studies by the Council on Municipal Home Rule Petitions: *Municipal Home Rule*, S. 580 (issued 3/22/61); and *Municipal Home Rule*, S. 950 (issued 3/10/65)); *Bd. of Appeals of Hanover v. Housing Appeals Comm. in the Dep’t of Cmty. Affairs*, 363 Mass. 339, 348 (1973) (*citing* a Legislative Research Council report on the so-called “anti-snob” zoning law, “Restricting the Zoning Power to City and County Government,” S. 1133 (issued 4/3/68)). Unfortunately, the Legislative Research Bureau fell into disuse sometime before the author started working at the legislature in 1999. In 2011, the legislature formally repealed the Bureau’s enabling statute. *See* “An Act to Improve the Administration of State Government and Finance,” ch. 165, 2011 MASS. ACTS, at §7 (repealing MASS. GEN. LAWS ch. 3, §§56-61).

- reports of special commissions;⁴⁸
- reports of standing commissions and boards;⁴⁹
- reports of Congressional committees;⁵⁰
- the construction of a statute by the community;⁵¹
- commentaries;⁵²
- administrative agency interpretations;⁵³
- legislator statements outside of the official record as reported in the popular press or in a news service;⁵⁴
- news reports on a social problem;⁵⁵ and,
- the evolution of successor statutes that show the original intent of the statute at issue.⁵⁶

Without doubt, some evidence will be more reliable or more valid than other evidence. What evidence will be more convincing to

48. *City of New Bedford v. New Bedford, Woods Hole, Martha's Vineyard and Nantucket S.S. Auth'y*, 330 Mass. 422, 429 (1935). When interpreting St. 1948 ch. 544, the court relied upon the report and recommendations of a special commission set up by a legislative resolve to investigate the subject of water transportation between New Bedford, Woods Hole, Martha's Vineyard and Nantucket. The court stated, "We may consider this report for any light it may shed upon the construction of the Act of 1948." *Id.*

49. *Passatempo v. McMenimen*, 461 Mass. 279, 288-89 (2012) (court relied on a report of the Commissioner of Insurance).

50. *Plunkett v. Old Colony Trust Co.*, 233 Mass. 471, 474 (1919) (SJC relied upon a report of the U.S. House Ways and Means Committee to discern Congress's intent in enacting the federal estate tax).

51. If a statute is read in a particular way by the legal community, and the legislature "acquiesces" to this interpretation by a long period of inaction, the court has held that this is strong evidence of the statute's proper meaning. *Clark v. Moody*, 17 Mass. 145, 148 (1821); *Tremont Tower and Condo. LLC v. George BH Macomber Co.*, 436 Mass. 677, 686-87 (2002) (widespread industry practice, standing alone, does not necessarily dictate interpretation of a statute, but the practice may be helpful discerning the legislature's intent); *Xtra Inc. v. Commissioner of Revenue*, 380 Mass. 277, 281 (1980) (long-held construction by the accounting profession of a tax statute persuasive as to statute's meaning).

52. Interpretations by commentators, while not controlling, are useful for discerning the intent of the legislature in enacting a law and the public's understanding regarding the enactment. See *Wilcox v. Riverside Park Enters. Inc.*, 399 Mass. 533, 539 n.14 (1987) (citing *C. Dallas Sands & Norman J. Singer, Sutherland's Statutes and Statutory Construction*, 2A §49.08 (4th ed. 1984)).

53. The courts give substantial deference to the expertise and statutory interpretation of the agency charged with primary responsibility for administering a statute. A state administrative agency has considerable leeway in interpreting a statute it is charged with enforcing, unless a statute unambiguously bars the agency's approach. *Spaniol's Case*, 466 Mass. 102, 110-14 (2013); *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 633 (2005); *Berrios v. Dept. of Pub. Welfare*, 411 Mass. 587, 595 (1992); *Arbella Mut. Ins. Co. v. Commission of Ins.*, 456 Mass. 66, 72 (2010) (court is deferential to the Commissioner's interpretation so long as it is "reasonably related to the objective of or within the ambit of, its enabling statute"); *Commerce Ins. Co. v. Commissioner of Insurance*, 447 Mass. 478, 481-83 (2006) (duty of interpretation rests in the courts; an agency's incorrect interpretation of a statute is not entitled to deference).

54. *Finch v. Commonwealth Health Ins. Connector Auth.*, 461 Mass. 232, 239-40 (2012) (citing an explanation of amendments provided by the chair of the Senate Ways and Means Committee as reported in the *Boston Globe*, Kay Lazar, "Senate's Health Cuts Stir Outrage," *Boston Globe*, May 15, 2009, at A1). Despite this citation, the court stated that it "normally caution[s] against inferring legislative intent from the statements of a single legislator outside the legislative record." *Finch*, 461 Mass. at 240 n.6 (citing *Admin. Justice of the House Court Dep't v. Commissioner of Admin.*, 391 Mass. 198, 205 (1984)). Still, the

a court is fact and case specific. Therefore, the Massachusetts State Library librarians suggest that it "can be helpful to review all legislative documents listed in the bill history and to examine all texts of amendments in order to reconstruct the development of the law."⁵⁷ Any one of these documents can be illuminating with an understanding of the legislative process.

C. The Challenge

The problem with legislative history in Massachusetts is not that judges refuse to consider it, but that materials rarely exist in an organized, accessible manner.⁵⁸ All too often, legislative history was either nonexistent or unhelpful in interpreting a statute or general law.⁵⁹

A lack of legislative history often forces courts to rely on other methods to discern legislative purpose or to clarify an ambiguity.⁶⁰ Courts often rely on textual methods of interpretation, including plain language,⁶¹ reading the statute as a whole⁶² and traditional

court felt as though the formal legislative history provided conclusive evidence of the legislature's intent and the statements of the Ways and Means chair simply provided "narrative completeness." *Finch*, 461 Mass. at 240.

55. *White v. City of Boston*, 428 Mass. 250, 253 (1998).

56. *Finch*, 461 Mass. at 242 n.8.

57. *State Library of Mass.*, *supra* note 3 at 1.10.

58. *Commonwealth v. Millican*, 449 Mass. 298, 300 (2007) (legislation is often enacted without a statement of its purpose or a revealing history).

59. For example, one superior court opinion stated that, "there is no 'official' legislative history" for the Equal Rights Act, and noted the lack of floor debates on the language or purpose of the act. *Greaney v. Heritage Hosp. Inc.*, No. CA 952547, 1995 WL 1146185, at *5 n.3 (Mass. Super. Ct. Dec. 28, 1995). See also *Tattan v. Kurlan*, 32 Mass. App. Ct. 239, 244 n.5 (1992) ("No legislative history of M.G.L. c. 183, § 58, appears to exist."); *Ortiz v. Hampden Cnty.*, 16 Mass. App. Ct. 138, 139 (1983) (finding no legislative history interpreting MASS. GEN. LAWS ch. 258, §10(c)); *White*, 428 Mass. at 253 (finding no legislative history for statute at issue). Other court opinions noted the lack of legislative history. See *LeBlanc v. Commonwealth*, 457 Mass. 94, 99 n.10 (2010) (lack of legislative history in determining the origin of an amendment); *Commonwealth v. Rivera*, 76 Mass. App. Ct. 530, 535 (2010) (lack of legislative history giving the reasons for a "particular reformulation" of wording in a criminal statute); *South St. Nominee Trust v. Board of Assessors of Carlisle*, 70 Mass. App. Ct. 853, 858 (2007) (lack of history concerning the duration of a tax-exempt withdrawal period for forest lands).

60. For example, in *Donnelly v. Contributory Ret. Appeal Bd.*, 15 Mass. App. Ct. 19, 21 (1982), the court could not find legislative history "which sheds light upon the legislative intent in adding the language at issue, which has remained substantially unchanged since its insertion by St. 1950, ch. 670, § 2." The ambiguous language, "living together," within a retirement benefit statute, had to be resolved by looking at analogous statutes and cases under the Workmen's Compensation Act. *Id.* This, however, is not always the case. In *Greaney*, 1995 WL 1146185, at *5 n.3, the court rejected the use of outside sources to discern legislative intent, such as commentary from the *Boston Bar Journal* that detailed the events leading to the enactment of the Equal Rights Act.

61. This is, of course, the primary source of interpretation. *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012) (the language of the statute is the principal source of insight into legislative purpose.) The court in *Rotondi* stated "that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." *Id.* (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001)).

62. *Rotondi*, 463 Mass. at 648 (quoting *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 358 (2006) (Spina, J. concurring)) ("Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and courts must interpret the statute so as to render the legislation effective, consonant with reason and common sense.").

canons of statutory interpretation such as *ejusdem generis*.⁶³ Courts may also look to similar statutes or case law in other jurisdictions to clarify a statute's meaning. In *Ortiz v. Hampden County*, for example, the Massachusetts Appeals Court relied upon interpretations of the Federal Tort Claims Act and an Alaska case to interpret a Massachusetts statute.⁶⁴ In another case, *Anawan Insurance Agency Inc. v. Division of Insurance*, the Appeals Court relied on a presumption that subsequent amendments indicate legislative intention when it could not find legislative history or appellate decisions on a statute.⁶⁵

The main obstacle to using legislative history is the lack of a central archive of legislative materials. In 1982, the Legislative Research Bureau called for a central repository of materials that reveal legislative intent, with a uniform policy on retaining relevant material, "to insure that the raw data used by the researcher, sponsor, bill drafter and other parties would be available for an extended period of time."⁶⁶ To date, this has not happened.⁶⁷ Because there is no central archive of legislative materials, a careful researcher must look for documents in several places. Knowing the legislative process, and the path any given bill took through it, gives the researcher a sense of where to look for key legislative history documents. The next section will give a brief description of the legislative process.

II. MASSACHUSETTS LEGISLATIVE PROCESS

The legislative process in any jurisdiction is complex, governed

by established rules⁶⁸ and is meant to subject all legislative proposals to scrutiny from many perspectives. The process allows multiple drafters, with perhaps widely divergent goals in mind, to refine proposed legislation. Part A briefly describes the primary stages of legislation: bill filing; committee review and revision; the readings and floor debate; conference committees; and executive action. Part B describes the various citations that are useful for legislative history researchers.

A. Legislative Process Stages

1. Bill Filing

During each two year session of the Legislature, as many as 6,000 bills⁶⁹ from a variety of sources may be filed for consideration. Most bills are filed by legislators, who electronically file the bill language and a petition⁷⁰ with the House and Senate clerks by the "filing deadline," a few weeks after a new legislative session begins.⁷¹ A small percentage of bills are "late filed" during the rest of the session.⁷² The governor may also file bills at any time by sending an executive message, petition, and bill to the House clerk.⁷³ Other entities can also produce bills, including a joint standing committee;⁷⁴ a ways and means or ethics committee;⁷⁵ state administrative agencies;⁷⁶ executive officers such as the attorney general, treasurer, secretary of state and auditor;⁷⁷ municipalities;⁷⁸ special commissions;⁷⁹ and any state citizen or

63. *Sheehan v. Weaver*, 467 Mass. 734, 742-43 (2014); *Banuski v. Dorfman*, 438 Mass. 242, 244 (2002). This traditional rule of construction indicates a more limited contextual meaning for a word that in isolation might have a broader meaning.

64. *Ortiz v. Hampden Cnty.*, 16 Mass. App. Ct. 138, 139 (1983).

65. *Anawan Ins. Agency Inc. v. Division of Ins.*, 76 Mass. App. Ct. 447, 452-53 (2010).

66. *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. at 57-58 (1982).

67. *But see* the efforts of Boston University School of Law to collect and make available legislative documents. *See infra* text following note 171.

68. The General Court operates under three sets of rules available in their entirety on the legislature's website. *The Joint Rules* may be found at: <http://www.malegislature.gov/people/clerksoffice/joint/rules>. *The Senate Rules* may be found at: <http://malegislature.gov/people/clerksoffice/senate/rules>. *The House Rules* may be found at either: <http://malegislature.gov/people/clerksoffice/house/rules>, or <http://mass.gov/legis/journal/desktop/2013/houserules.pdf>. *The Manual of the General Court* is published for each session and includes not just the rules but also information on the current legislators. The manual is available for sale in the State Bookstore, which is located at the State House, Room 116.

69. Bills enacted by the legislature and signed by the governor are either "acts" or "resolves." Acts typically amend the Massachusetts General Laws and have a general effect. Resolves have a more limited effect, often to establish a special commission or investigate a specific issue. *See* <http://malegislature.gov/laws/sessionlaws/search>.

70. *See* MASS. SENATE R. 15 (legislation must be generally made by petition and bill process). The petition is a brief form stating the name of the bill and listing the sponsor or co-sponsors. *See* MASS. SENATE R. 17 (forms of bills) and 18 (introduction of business). The bills are now presented to the clerks in electronic form. *See* MASS. SENATE R. 17.

71. *See* MASS. GEN. CT. JOINT R. 6A. The clerks are required to make the bill text available to the public on the internet. *See* MASS. SENATE R. 20A.

72. According to MASS. GEN. CT. JOINT R. 12, to be accepted late, the measures must be approved by the Rules Committee in each branch and must have the approval of four-fifths of the members in each branch before being admitted

and sent to a committee for consideration.

73. Most bills from the governor will have a transmittal letter offering the purpose for filing that particular piece of legislation. The governor's "annual message" is a general outline of what the governor seeks to accomplish in the upcoming year, and will often include descriptions and arguments for legislation that he or she plans to file. In the first year of a legislative session the annual message is printed as Senate Document 1. *See* State Library of Mass., *supra* note 3, at 1.2.2.

74. MASS. GEN. CT. JOINT R. 1 requires committees to conduct oversight of government agencies and the implementation of laws. After such oversight, the committees may report their findings and file corrective legislation with either the House or Senate clerks. MASS. GEN. CT. JOINT R. 1. A committee may also file a bill germane to its jurisdiction if it is agreed to by two-thirds of the committee members from each chamber. MASS. GEN. CT. JOINT R. 3A.

75. These committees are permitted to report bills not founded on a petition. *See* MASS. GEN. CT. JOINT R. 12B & 3A; MASS. SENATE R. 20; MASS. HOUSE R. 20 & 30.

76. MASS. HOUSE R. 24 (petitions filed by executive officers, boards and commissions). Agencies may file proposed legislation with the House Clerk. *Id.*

77. These executive agencies may petition for legislation in their annual messages. MASS. HOUSE R. 24 (petitions filed by executive officers, boards and commissions).

78. Municipalities may file legislation under the Constitution's Home Rule Amendment. MASS. CONST., art. LXXXIX, §8. *See also* MASS. GEN. CT. JOINT R. 7B; MASS. SENATE R. 20; MASS. HOUSE R. 24.

79. The legislature will often establish a special commission to examine a particular issue and make findings and legislative recommendations. When the commission concludes its business, it will present its report to the general court and it will receive either a House or Senate document number. Often, commissions are required to file with both chambers, in which case the clerks will decide what number to assign the report. Commission reports for most of the 20th century can be found in the book, *Index of Special Commission Reports Authorized by the General Court, 1900-1988*, with an update covering reports through 1994. The index is arranged by subject keyword, with references to the year of the report and House or Senate document number. STATE LIBRARY OF MASS., *supra* note 3, at 1.2.4.

group.⁸⁰ The House and Senate clerks assign each filed bill a number, and refer the bill to the appropriate committee for review and revision.

2. Committee Review

Nearly every bill will, at some point, be reviewed by at least one of the legislature's 28 joint committees.⁸¹ The joint committees are bipartisan and comprised of six senators and eleven representatives.⁸² The committees are led by co-chairs, with one appointed by the Senate President and the other by the House Speaker.⁸³ The committees are obligated to hold public hearings on each of the bills assigned to them,⁸⁴ but given the large volume of matters assigned to some of the committees, up to 50 similar bills may be grouped together into a single hearing. Notices of such hearings are sent to the Senate and House clerks and are published on the legislature's official website.⁸⁵ Committees conduct hearings according to the committee rules, which are on file with the clerks.⁸⁶ At most hearings, the committee will typically hear from anyone who wishes to speak for or against a bill, including other legislators, government officials, representatives

of groups or organizations, lobbyists, and people speaking on their own behalf. The committee will also typically receive written testimony or exhibits which complement the oral testimony.⁸⁷

After holding a hearing, the committee typically informally "studies" the matter for a period of time when the committee staff gathers more information on the subject, seeks out proposed amendments, meets with proponents and opponents, and consults with other members and chamber leadership.⁸⁸ When the chairs are ready to move a bill out of committee, they schedule an "executive session," which may or may not be open to the public.⁸⁹ The committee may vote on the original bill, but it is more likely to have amended the original language. In the event that it has amended the original language, the committee must then decide to which chamber to report the bill.⁹⁰ Unlike Congressional committee reports, these reports are perfunctory.⁹¹ A bill reported with a recommendation that affects state finances will then be referred to either the House or Senate Committee on Ways and Means.⁹²

80. The Constitutional Right to Petition guarantees that all citizens and groups can have a bill filed on their behalf by their member of the House or Senate. MASS. CONST. pt. 1, art. XIX. Citizens may also file petitions under the right to free petition, but without the endorsement of a senator or representative. Petitions are typically held by the clerks. STATE LIBRARY OF MASS., *supra* note 3, at 1.2.1. If the member agrees with the proposal, he or she will often sign onto the petition and become the legislative sponsor of the bill. If the member does not agree with the proposal, she will file the petition and the bill "By the Request of [Citizen's Name]," signaling her disagreement to her colleagues. The Constitution also allows the electorate to approve changes to the general laws through the initiative petition process and to repeal recently enacted legislation through the referendum process. MASS. CONST., art. XLVIII, §2 ("The Initiative"). This complex process is beyond the scope of this paper.

81. See MASS. GEN. CT. JOINT R. 1. The joint committees, which are created and governed by Joint Rule 1, consist of: Children, Families & Persons with Disabilities; Community Development and Small Businesses; Consumer Protection and Professional Licensure; Economic Development and Emerging Technologies; Education; Elder Affairs; Election Laws; Environment, Natural Resources and Agriculture; Financial Services; Health Care Financing; Higher Education; Housing; Judiciary; Labor & Workforce Development; Mental Health & Substance Abuse; Municipalities and Regional Government; Public Health; Public Safety & Homeland Security; Public Service; Revenue; State Administration and Regulatory Oversight; Telecommunications, Utilities & Energy; Tourism, Arts & Cultural Development; Transportation; and Veterans & Federal Affairs. See <http://www.malegislature.gov/Committees/Joint/rules>. Within four weeks of appointment, the joint committees must adopt rules of procedure. These rules are filed with the clerks and are public records. See MASS. GEN. CT. JOINT R. 1. The House and the Senate also have standing committees that are comprised entirely of members from that chamber. The Senate standing committees consist of: Bills in the Third Reading; Bonding, Capital Expenditures & State Assets; Post Audit & Oversight; Ethics & Rules; Global Warming & Climate Change; Steering & Policy; and Ways & Means. See MASS. SENATE R. 12. The House standing committees are: Bills in the Third Reading; Bonding, Capital Expenditures & State Assets; Post Audit & Oversight; Ethics & Rules; Global Warming & Climate Change; Steering, Policy & Scheduling; Ways & Means; Rules; Personnel & Administration; and Floor Divisions. See MASS. HOUSE R. 17. The standing committees, however, typically have a more limited role and may only consider bills sent to them by a joint committee.

82. MASS. GEN. CT. JOINT R. 1. The committee members are chosen by the majority and minority leadership. See MASS. SENATE R. 13(b); MASS. HOUSE R. 18. The committees on Economic Development & Emerging Technologies, Health Care Financing and Transportation have seven senators and 13 Representatives. See MASS. GEN. CT. JOINT R. 1.

83. See MASS. SENATE R. 13(a); MASS. HOUSE R. 18.

84. MASS. GEN. CT. JOINT R. 1B (a joint standing committee shall hold a public hearing on each matter referred to it in each legislative session); MASS. GEN.

CT. JOINT R. 1D (hearings to be open to the public).

85. MASS. GEN. CT. JOINT R. 1D (a hearing schedule must be sent to the clerks at the beginning of a session from the start of the session until the fourth Wednesday in June). The list for hearings can be found on the legislature's home page at: <http://www.malegislature.gov/Events/Hearings>. This page lists each committee hearing and where it will take place. Most hearings take place in the State House, but some are conducted outside of the building. A limited number of hearings are also videotaped, which will be noted on the web page.

86. See MASS. GEN. CT. JOINT R. 1 (committees must submit committee rules to clerks within four weeks of appointment).

87. Since few of the hearings have been recorded, submitting written testimony is a good way to put an organization's or person's views "on record" with the committee. Written testimony will also typically be circulated to committee members who could not attend the hearing.

88. See, e.g., MASS. SENATE R. 16A.

89. See MASS. GEN. CT. JOINT R. 1D.

90. See MASS. GEN. CT. JOINT R. 10 (requiring that all bills before a committee be acted upon no later than the third Wednesday of March of the second annual session). A significant constitutional requirement on committee reports is that money bills must be sent to the House first. See MASS. CONST., pt. II, art. VII; MASS. GEN. CT. JOINT R. 4.

91. The members of a committee, but more often just the chair from the chamber where the bill will be reported, will sign a card that states the bill is being reported by her committee with an "ought to pass," "ought not to pass," "ought to pass with an amendment" or "discharged to another committee" recommendation. See MASS. GEN. CT. JOINT R. 10A. The House and Senate rules govern how a chamber processes adverse reports. Typically, the chamber will vote to accept the report and the bill dies. Occasionally, the chamber will resubmit the bill to the reporting or another committee for further study. See MASS. SENATE R. 30; MASS. HOUSE R. 32. A committee may also place bills into a "study order," which allows the committee to sit and work on legislation during recesses. The vast majority of bills sent to study never reemerge for further consideration. See MASS. GEN. CT. JOINT R. 10A. Interestingly, Mass. Gen. Ct. Joint R. 13 allows committee members to include a "brief statement of intent with all papers intended for presentation to the general court," but such a statement is not required. See MASS. GEN. CT. JOINT R. 13. In practice, such statements are rarely, if ever, filed. Further, bills and resolves reported by a joint committee shall be made available to all members electronically and to the public via the internet. See MASS. GEN. CT. JOINT R. 6.

92. If the potential associated cost of a proposed bill exceeds \$100,000, the reporting joint committee is required to file a fiscal note with its report that details the estimated cost or the fiscal impact of the proposed legislation. These fiscal notes are to be filed with the clerks and made available to the public. See MASS. GEN. CT. JOINT R. 4A; MASS. SENATE R. 27; MASS. HOUSE R. 33. See also MASS. GEN. LAWS ch. 3, §38A.

3. Readings and Floor Action

Bills that survive the committee process are given three readings in each branch of the legislature.⁹³ When a bill is read for the first time at a session it appears in the House or Senate Journal as favorably reported by a committee. At this point, no debate is permitted, but the bill is either referred back to a committee or placed on the calendar for a second reading.⁹⁴ Bills in second reading are often “held” in the House or Senate committees on Steering and Policy or Rules until the leadership wishes to take a matter up for debate.⁹⁵ A majority vote is required to advance a bill from second to third readings and debate is permitted during the second and third readings. Bills ordered to a third reading are sent to the Committee on Bills in the Third Reading, which works closely with the chamber’s legal counsel to ensure that the bill is constitutional and properly drafted.⁹⁶ Either branch may defeat, amend or substitute new language for a bill during second and third readings.⁹⁷ If a bill is significantly changed at any point in the process, the clerk for the chamber making the changes may assign the bill a new number to distinguish it from the original proposal. Once a branch votes in favor of a bill it is considered to be “engrossed” and sent to the other branch to repeat the readings process.⁹⁸ If the second branch makes changes to the bill, it must be returned to the originating chamber for concurrence.

4. Conference Committees

If the two chambers continue to disagree about the exact language of the bill, the presiding officers and minority leaders appoint a six-person conference committee.⁹⁹ Three members, including one member of the minority party who voted for the engrossed bill, are appointed to represent each chamber. A conference committee is

often given great latitude to redraft the bill to reach an agreement between the chambers. If the conference committee can resolve the differences in policy and drafting and gain the approval of at least two members of each chamber, the revised language is sent to the two chambers for a vote on engrossment.¹⁰⁰ The final bill is then “enacted,” first by the House and then the Senate. After enactment in the Senate, the bill is sent to the governor for his “approbation.”¹⁰¹

5. Executive Action

After receiving the enacted bill, the governor has 10 days to consider and decide what to do with the bill. If he signs it, any amendments to the General Laws typically become effective 90 days after approval.¹⁰² If the legislature or governor attaches an “emergency preamble” to the legislation, the changes to the General Laws take effect immediately.¹⁰³ The governor may also send the bill back to the legislature with amendments, often with an explanatory message.¹⁰⁴ The legislature may then debate the amendments and repeat the enactment procedure.¹⁰⁵ The governor may also veto the legislation, in which case the bill is sent back to the chamber where it originated for a debate and vote to override the veto.¹⁰⁶ A two-thirds vote in both chambers is required to override a veto.¹⁰⁷ If the governor takes no action within ten days, the bill becomes a law without his or her signature.¹⁰⁸ If, however, the legislature goes out of session during the ten days and the governor fails to sign the bill, the legislation dies by a “pocket veto.”

B. Citations

Researching legislative history involves finding and using several citations. The most common are citations to the Massachusetts General Laws, to session laws and to bills.

93. See MASS. SENATE R. 23 (no bill shall be proposed or introduced unless received from the House or a committee); and MASS. SENATE R. 28 and MASS. HOUSE R. 39 (no bill or resolve shall be engrossed without three readings on three several days). The bills are read by their title, unless an objection is made. See, e.g., MASS. SENATE R. 29.

94. See, e.g., MASS. SENATE R. 26.

95. These committees do not issue reports, but rather simply make scheduling priorities. See MASS. SENATE R. 32A (Committee on Steering & Policy); MASS. HOUSE R. 7A (Committee on Steering, Policy and Scheduling); MASS. HOUSE R. 7B (Committee on Rules); MASS. HOUSE R. 41 (Committee on Steering & Policy).

96. See MASS. GEN. CT. JOINT R. 22A; MASS. SENATE R. 33; MASS. HOUSE R. 22. Upon engrossment, the clerks send bills to the Committees on Bills in the Third Reading of the two branches, which, acting jointly, examine the bills to “ensure accuracy in the text, that the legislation is correct as to form, that references to previous amendments to any particular law are correct, and to ensure proper consistency with the language of existing statutes.” MASS. GEN. CT. JOINT R. 22A. This work is coordinated with the Senate and House Counsels, with the approval of the majority and minority leadership of each branch. The Committees on Bills in the Third Reading may make needed corrections that are not substantive. *Id.*

97. See, e.g., MASS. SENATE R. 31 & 31A (amendment process). All matters before the House and Senate must be posted online for the members and the public 24 hours in advance of all roll call votes. MASS. SENATE R. 33A; MASS. HOUSE R. 33A.

98. See MASS. SENATE R. 26; MASS. HOUSE R. 34 & 35. The clerks make the

results available on the official general court website within 48 hours of the vote. See MASS. SENATE R. 8A; MASS. HOUSE R. 84A. A clerk may waive this requirement if circumstances dictate, but paper copies must be available. *Id.*

99. MASS. GEN. CT. JOINT R. 11.

100. *Id.*

101. See MASS. GEN. CT. JOINT R. 20.

102. MASS. CONST., art. XLVIII. Days are counted in succession, including holidays and weekends, and acts become effective at 12:01 a.m. on the 91st day. This delay allows citizens to initiate the Referendum Petition process to repeal unpopular legislation. The Massachusetts Legislative Reporting Service printed a list of acts and their effective dates in the *Guide To Massachusetts General and Special Acts* until the Reporting Service ceased operations in 2008. The guide is available at the State Library, and can also now be found on Instatrac. See www.instatrac.com (MassTrac).

103. MASS. CONST., art. XLVIII. Emergency acts note the exact time down to the minute when the legislation takes effect. Further, they are not subject to repeal by referendum petition. A resolve also takes effect immediately unless it provides otherwise, and does not require an emergency preamble. MASS. GEN. LAWS ch. 4, §2 (2014). See also MASS. GEN. CT. JOINT R. 22 (votes for emergency preamble).

104. See MASS. CONST., pt. II, art. II.

105. See MASS. SENATE R. 49; MASS. HOUSE R. 40.

106. MASS. CONST., pt. II, art. II.

107. *Id.*

108. MASS. CONST., pt. II, art. XC, §1.

1. Massachusetts General Laws

The Massachusetts General Laws are the codified version of the aggregate session laws passed during the long legal history of the commonwealth. These statutory laws are organized by subject matter into five parts and 282 chapters.¹⁰⁹ The commonwealth has published an official edition of the General Laws every two years since 1984.¹¹⁰ Private legal publishers such as West and Lexis publish annotated versions of the General Laws and after each section will note the various session laws that amended that particular statute.

Examples: M.G.L. ch. 272 §5
272 M.G.L. 5

2. Session Laws, or the Acts & Resolves

When the legislature passes a bill and it is signed by the governor, it is called a session law. The session law may be an act or a resolve, and depending on the law's complexity, may amend several parts of the General Laws. The session law may also contain provisions, such as establishing a special commission or an appropriation, that is never included in the General Laws. This is especially true in the annual budget, which may include hundreds of "outside sections" that amend the laws. The Secretary of State numbers session laws chronologically according to when the bill becomes law. These are the chapters of the session's legislation. A researcher should note all of the session laws that created or amended a General Law.

Examples: 2012 Acts 45 Section 3
St. 2012, ch. 45 §3

3. Bill Numbers

The House and Senate clerks assign a number to each document, or bill, they receive. These include proposed acts, proposed resolves, messages from the governor, study orders, etc. If a bill is significantly changed during the legislative process, the clerks may assign the revised document a new bill number.

Examples: 2013 HB 1234 (House Bill)
H. 1234 (House Bill)
2011 SB 684 (Senate Bill)
S. 684 (Senate Bill)

III. FINDING LEGISLATIVE HISTORY

By tracing how a bill moved through the legislative process, the documents collected and created by the legislature during the process, and how the bill language was — or was not — changed, a researcher may find clues as to legislative intent. In this part, section

A will describe the several resources available, both on the internet and in more traditional locations such as the State Library and the State Archives. Section B will describe how to reconstruct a comprehensive procedural history for a particular bill. Section C will describe the documents that may be produced during the legislative process. For each of the second and third parts, I will reference how to find key information through the various web-based and traditional sources.

A. Sources of Legislative History

1. Traditional Resources

The State Library of Massachusetts

Established in 1826, the State Library has an extensive collection of legislative documents and is a federal and state depository for official documents.¹¹¹ Legislative history research is one of the most common types of research with which the staff assists patrons. The library holds hard copies of the Acts and Resolves, bill language and the *Journals* of the legislature going back to the colonial era. The library also keeps the Bulletin of Committee Work and Legislative Record, which records the activities of the legislature.

The library offers a growing amount of information online, including Acts and Resolves since 1692; nearly every bill ever filed;¹¹² *House Journals* since 2001 and *Senate Journals* since 1998;¹¹³ and records for special legislative commission reports, state documents and legal treatises, some going back as far as 1802.¹¹⁴

Finally, library patrons can access materials produced by sources that normally require a subscription. Library patrons can access the State House News Service (SHNS)¹¹⁵ archives by using microfiche for SHNS files from 1972 to 1986, as well as online materials from 1986 on the library's computers.¹¹⁶

Archives of the Commonwealth of Massachusetts

The Archives of the Commonwealth of Massachusetts is a division of the Secretary of State's Office. The Archives collects, arranges, and preserves records that were produced by the state government, but which are no longer being actively used by the government. There are two categories of records kept by the Archives: records that the Archives has a legal mandate to receive and hold, and those records that, although there is no legal obligation to preserve, the Archives believes worthy of preserving and has acquired by a mutual agreement with an office or agency.¹¹⁷ The Archives also keeps a variety of legislative papers including Journals of the General Court dating from 1628, Acts and Resolves from 1686, legislative

109. An unofficial version of the general laws may be accessed at: <http://www.malegislature.gov/laws>. Some of the commonwealth's laws date from the time of the state's founding in 1780 and even back to the colonial period. Recodifications took place in 1836, 1860, 1882, 1902, 1921 and 1932. Each revision added all new laws to the code, deleted repealed laws, restructured chapters and removed extra verbiage. *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. at 33-34 (1982). In 1982, the Legislative Research Bureau reported that, "It has been suggested that another recodification is long overdue, but at this writing, none has been completed." *Id.* at 34. Thirty-two years later, there still has been no serious attempt at recodification.

110. See <http://www.mass.gov/anf/research-and-tech/legal-and-legislative-resources/massachusetts-law.html>.

111. State Library website, www.mass.gov/lib.

112. Presentation by Bette Siegel, State Library Documents Librarian, Boston University School of Law (Feb. 10, 2014). As of the time of printing of this article, the library staff is in the process digitizing every bill.

113. *Id.* The library staff plans to digitize all of the journals and put them online after the bills are fully digitized.

114. STATE LIBRARY OF MASS., *supra* note 3, at 1.10.2.

115. The State House News Service is a private reporting service operating in the State House. See *infra* text accompanying notes 124-26.

116. Siegel presentation, *supra* note 112.

117. *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. at 51 (1982).

documents¹¹⁸ dating to 1775, and a wealth of documents generated by the Executive branch, including the governor's legislative files from 1964 to 2006.¹¹⁹

Individual Legislator and Committee Offices

Various legislative offices will have files on pieces of legislation on which they worked. These files may be found with the sponsor of a bill, the committee office or senate chair's office for committees that considered the bill,¹²⁰ and the offices of members who worked on the bill during a conference committee. The quality of these files varies greatly; they are often thrown away at the end of a session, and they are only rarely transmitted to either the State Library or Archives. After determining all of the stops a bill made during the legislative process, each of the relevant offices should be contacted to see what it has and may be willing to share.

2. Internet Sources

The Legislature's Website

The legislature's website should be the researcher's first stop. It is free, contains very useful information about the legislators, committees, rules and legislation, is fairly easy to use, and seems to be improving all the time.¹²¹ From the web page, one can find links to the state Constitution, the General Laws, session laws and the Legislature's rules.

Westlaw Next

Westlaw, the electronic legal research tool, offers some legislative information.¹²² It is, however, an amalgamation of publicly-available information that requires a subscription and can become quite expensive depending on the researcher's skill navigating Westlaw's databases and search engines. Although Westlaw is useful for making sure that the researcher has not missed anything, better, cheaper options exist.

MassTrac

MassTrac, also known as "InstaTrac," is a private company that provides a bill tracking service for its subscribers. The company's website¹²³ holds a wealth of material on the Massachusetts Legislature and bills dating to the 1995 to 1996 session, with more comprehensive coverage after 2005.¹²⁴ This service tracks bill text and procedural history, committee hearings and agendas, bill testimony,

press releases, news on the executive branch and legislator contact information. The public can access MassTrac free of charge at the State Library.¹²⁵

State House News Service

The State House News Service (SHNS) is a privately-owned news service consisting of several reporters with offices located in the State House. Although a private entity, SHNS has historically produced unbiased and reliable information with a lack of editorial comment. SHNS sells its reporting to other news outlets and to individual and organizational subscribers. The SHNS can be a rich resource for legislative history. The service includes reports on what was said on the floor during formal session debate, reports on what transpired during committee hearings, articles written about specific bills, video and audio archives that include press conferences on issues or bills, and an archive of press releases issued by legislators or executive branch officials. The public can also access the service free of charge at the State Library.

B. Reconstructing a Bill's Procedural History

Reconstructing the path a bill took through the legislative labyrinth is an essential first step to collecting legislative history. By reviewing every action taken on a proposal, often under several bill numbers, the researcher assembles a complete picture of which committees and legislators had an influence on the formation of the statute. Traditionally, this task required going to a law library and piecing together the bill history by using the *Bulletin of Committee Work and Legislative Record*, commonly known as the "Bulletin." For statutes passed before 1997, one must still use the Bulletin and other printed materials.¹²⁶ For more recent statutes, however, a tremendous amount of information is now on the internet. This section will describe how to reconstruct a bill's procedural history by using the legislature's web page. To illustrate this process, I will show the bill history for a 2013 law, "An Act Relative to Background Checks."¹²⁷

The legislature's website has a page entitled "Session Laws," where one can search the acts passed since 1997 and the resolves passed since 2001.¹²⁸ From this page, the session laws are searchable by year, chapter or keyword.¹²⁹ It is often easiest to click on the year the statute became law and browse the list of statutes. As is true in the *Bulletin*, the statutes are arranged by year and chapter, in the chronological order the statute was signed by the governor.

118. These records are known as the "Legislative Package," see *infra* text accompanying notes 164-65.

119. These materials are known as the "Legislative Folder," and include copies of engrossed bills, position papers, veto messages and occasionally other related files. See *infra* text accompanying notes 166-68. The Archives also keeps the *Journal of the Governor's Council* since 1628, council files from 1780, executive orders, and records of administrative agencies, commissions and boards.

120. See *infra* text accompanying notes 155-58.

121. www.malegislature.gov.

122. For those who do not have a subscription to Westlaw, the State Library offers two hours per day of the service on its public computers. Siegel presentation, *supra* note 112.

123. www.instatrac.com.

124. MassTrac offers information on the legislators and contact information for legislative staff, as well as information on the bills before the legislature.

125. Siegel presentation, *supra* note 112.

126. The process described below for finding a bill's procedural history on the legislature's website is very close to the process one would use with the *Bulletin*, and is still relevant for older bills.

127. *An Act Relative to Background Checks*, ch. 77, 2013 MASS. ACTS.

128. Please note that these are unofficial versions of the statute. The official publication of the session laws is produced annually by the Secretary of the Commonwealth and is entitled *The Acts and Resolves of Massachusetts*. See malegislature.gov/laws/sessionlaws/search. Session laws from 1692 to 2009 are available on the State Library's website, mass.gov/anf/research-and-tech/oversight-agencies/lib. The State Library will soon have the entire body of session laws digitized and available on line. See *supra* note 112.

129. The page also gives "tips and examples." See malegislature.gov/laws/sessionlaws/search.

By clicking on the session laws for 2013,¹³⁰ the researcher will see that An Act Relative to Background Checks was the 77th act of the year. Also listed are the date the statute was approved by the governor, and the bill number that the statute carried when enacted:

CHAPTER 77: AN ACT RELATIVE TO
BACKGROUND CHECKS (*see* Senate, No. 1839)
Approved by the governor, September 3, 2013¹³¹

The entry contains two hyperlinks. The chapter number link leads to the text of the statute. The bill number link leads to a tremendous amount of information, including:

Bill S.1839 188th (Current)

An Act relative to background checks

The committee on Ways and Means, to whom was referred the Senate Bill relative to the protection of children (Senate, No. 1136); reports, recommending that the same ought to pass with an amendment substituting a new draft entitled “An Act relative to background checks” (Senate, No. 1839)

Sponsors: Senate Committee on Ways and Means

Status:¹³²

The bill number link also leads to the following tabs: “Current Bill Text;” “Bill History Roll Call;” and “Miscellaneous.”

The “Current Bill Text” tab provides the bill language as it was reported by the Ways and Means Committee; the “Roll Call” tab shows that the vote in the Senate was unanimous and provides a pdf showing how each senator voted;¹³³ and the “Miscellaneous” tab in this instance tells the researcher that the bill had an emergency preamble.¹³⁴ The most useful tab may be “Bill History.” In this instance the history for S.1839 is:

Actions for Bill S.1839

Date	Branch	Action
7/30/2013	Senate	Reported from the committee on Senate Ways and Means.
7/30/2013	Senate	Recommended new draft of S1136.
7/30/2013	Senate	Substituted as a new draft for S1136.
7/30/2013	Senate	Ordered to a third reading.
7/30/2013	Senate	Read third.
7/30/2013	Senate	Passed to be engrossed — Roll Call #141 [YEAS 39 — NAYS 0].
7/31/2013	House	Referred to the committee on House Ways and Means.
8/12/2013	House	Bill reported favorably by committee and referred to the committee on House Steering, Policy and Scheduling.
8/22/2013	House	Committee reported that the matter be

130. *See* www.malegislature.gov/laws/sessionlaws/acts/2013.

131. *See id.*

132. *See* www.malegislature.gov/bills/188/senate/s1839.

133. In this instance, the House appears to have passed the bill by a voice vote, so roll call information is not available for that branch.

		placed in the Orders of the Day for the next sitting.
8/22/2013	House	Rules suspended.
8/22/2013	House	Read second, ordered to a third reading, rules suspended, read third and passed to be engrossed.
8/26/2013	House	Emergency preamble adopted.
8/26/2013	Senate	Emergency preamble adopted.
8/26/2013	House	Enacted.
8/29/2013	Senate	Enacted and laid before the governor.
9/3/2013	Governor	Signed by the governor, Chapter 77 of the Acts of 2013.

This, however, is not the complete procedural history of the background check law, but only the portion after the Ways and Means Committee issued a redrafted version of the bill. This history notes that S. 1839 replaced S. 1136, and the page provides a hyperlink for the earlier bill.¹³⁵ By following that link, there is a tab with the original bill language, the three original sponsors under “Miscellaneous” and a further procedural history:

Actions for Bill S.1136

Date	Branch	Action
1/22/2013	Senate	Referred to the committee on Public Safety and Homeland Security.
1/22/2013	House	House concurred.
5/20/2013	Joint	Hearing scheduled for 05/21/2013 from 10 a.m.–12 p.m. in B-1.
6/6/2013	Senate	Bill reported favorably by committee and referred to committee on Senate Ways and Means.
7/30/2013	Senate	Committee recommended ought to pass with an amendment, substituting therefore a new draft, <i>see</i> S1839.
7/30/2013	Senate	Rules suspended.
7/30/2013	Senate	New draft substituted (<i>see</i> S1839). ¹³⁶

The researcher knows that they now have the complete history because it begins at the beginning of the legislative session — January of an odd-numbered year — and the bill was referred to a joint committee, which is where nearly every bill goes for “first reading” consideration.

With the complete history, the researcher can tell every stop the bill made during the legislative process, what documents related to the bill were probably produced, and which legislators or staff members may be able to provide those documents or other information.

The procedural history can also be found on Westlaw within the “State Materials” database by using the General Laws citation.¹³⁷ Once you fill in the form with the desired general law chapter and section, Westlaw provides the current statutory language with “credits” at the end of the page. The credits section provides hyperlinks to each session law that amended that particular chapter and section.

134. *See supra* note 132.

135. *Id.*

136. *See* www.malegislature.gov/bills/188/senate/s1136/history.

137. The database string is: State Materials > Massachusetts > Massachusetts Statutes & Court Rules > Tools & Resources > Massachusetts Statutes Find-Template.

Click on the hyperlink for our particular statute, “St. 2013, c. 77, §2, eft. Sept. 3, 2013,” and the session law appears with the following buttons: “Bill Drafts;” “Legislative History Materials;” and “Statutes Affected.” The “Legislative Materials” tab reveals “Reports,” which gives the procedural history for S. 1839.

On the MassTrac homepage, a researcher can simply type “background checks,” in the search field and several results appear. One of the results is “SB 1839 An Act Relative to Background Checks,” which brings the researcher to a page with a great deal of information on the statute, including S. 1839’s procedural history. There is also a tab for “Related,” which gives a link to the previous version of the bill, S. 1136, where one can find the statute’s earlier procedural history. The Background Check statute, and its related information, may also be found by scrolling to the first screen to the left of the home page and searching the “Session Laws,” which links to a list of the various laws passed during the current and past sessions.

C. Legislative Documents

1. The Journal

The House and the Senate both keep a journal of the official proceedings.¹³⁸ Unlike the *Federal Congressional Record*, however, it is not a verbatim transcript of debate. The Massachusetts *Journal* is a barebones record of the legislature’s daily business, which may include the various motions, rulings from the chair, assignments of bills to committees, the reports of the committees, amendments and new versions of the bill, and votes.¹³⁹ The *Journals* will record the results of each of these votes, and for roll call votes, will list how each legislator voted. The *Journals* also record the rulings by the clerks and presiding officers for each chamber. These rulings, as in the case of whether an amendment goes beyond the scope of a bill, may give clues as to legislative intent.¹⁴⁰ Occasionally the *Journal* will include a floor speech, usually a legislator’s first or final speech to the chamber, or if a legislator wants to create an evidentiary record of legislative intent.¹⁴⁰ Although minimal, the *Journals* are useful for finding amendments, roll call votes, and occasionally rulings from the chair on parliamentary matters.

The State Library and the State Archives have complete *Journals* going back to the colonial era. In addition, the State Library is in the process of producing a complete digitized version of the *Journals* for their website.¹⁴¹ Currently, the legislature’s website has the *Senate Journals* starting in 1998 and *House Journals* since 2001.¹⁴² The journals are also searchable at WestlawNext.¹⁴³

2. Committee Documents

The committees are the workhorses of any legislature. Armed

with subject matter expertise and institutional memory, committee members and staff scrutinize legislation, gather evidence, and amend or redraft the original bill. A committee may gather a tremendous amount of material useful to constructing a legislative history, including: hearing testimony; letters of support; research and data; legal analysis; discarded versions of the bill; and at times, reports on the committee’s findings and recommendations. The committee files offer a window into evidence that the committee found credible, that which it dismissed, and the legislative language that it thought would properly address the issue at hand. This section will provide a description of these documents and where to find them.

Where to Find Committee Documents

The documents that are generated or gathered by a committee include hearing testimony, member’s letters of support, committee summaries and analysis, memoranda, bill revisions, and committee reports.

Key to any search for committee documents is to request the assistance of the staff for both the House committee and Senate chair. Both committee co-chairs will have staff devoted to committee work, led by either a “committee counsel” or “research director.”¹⁴⁴ The House and Senate, however, approach committee assignments and staffing differently, which may affect the quality of their records. Senate committee chairs will hire a staff member or two to focus on committee business. When the senator is assigned to chair a new committee, however, the entire staff moves with the senator and the counsel or director focuses on the business of the new committee. The outgoing committee staff may or may not hand off their committee files to their successors.

In the House, chairs have a committee staff separate from their personal staff. When a new House chair is named to a committee, she inherits the committee staff from the outgoing chair. This arrangement has several benefits such as continuity, institutional memory, a high level of expertise, a better developed system for keeping files and records, and better developed policies and practices for sharing those documents with the public.¹⁴⁵

The House and Senate staffs generally collaborate well on committee business, including drafting bill summaries and distributing information submitted to the committee both to other committee members and to their respective chambers. Still, there may be differences in the records received and kept by the two committee staffs. For example, some documents will be seen as more important by one staff, certain outside groups may be more comfortable working with one chair or the other, and some testimony may be tailored depending on the legislative stage or for a particular chamber.

138. See, e.g., Mass. House R. 10.

139. The Massachusetts Legislature conducts the majority of its business through two types of votes: voice votes and roll call votes. The Senate also conducts “standing votes,” where senators in favor of a motion stand at their places within the Senate chamber. The results of these votes are recorded in the *Journal*, but not which individual senators voted or how they voted. Typically, standing votes are used to determine whether there is enough support in the chamber to force a roll call vote.

140. A member of the branch must move that the remarks be reprinted in the *Journal* and the body must give its assent.

141. Siegel presentation, *supra* note 112. Subject to funding, the *Journals* will be digitized shortly after the library completes digitizing the legislative documents. *Id.*

142. See www.mass.gov/legis/journal.

143. WestlawNext: State Materials > Massachusetts > Massachusetts Statutes & Court Rules > Massachusetts Legislative History > Journals.

144. The telephone numbers for the House Committee and Senate Chair’s offices are listed on each committee page on the legislature’s website. See <http://www.malegislature.gov/committees/joint>. Unfortunately, the Massachusetts Legislature website does not list staff members. Instatrac, however, does have a list of staff and their contact information that is updated regularly. See www.instatrac.com.

145. Documents created during the legislative process are exempted from laws requiring public inspection. See MASS. GEN. LAWS ch. 4, §7 (cl. 26th); MASS. GEN. LAWS ch. 66, §10. Some offices take the position that any time documents are shared with the public, this exemption is weakened. For this reason, some offices will not provide legislative documents to the public. Other offices, however, will provide access to any document that they do not consider privileged in some way.

Although the committee files can be a great resource, the keeping and archiving of these important documents is haphazard. Depending on the staffer, the file may be complete and organized or poorly kept. There is also the persistent problem of limited filing space causing a biennial purge of files to make room for the new session's bill files.

Committee action and documents may provide valuable insight into legislative intent. It is essential, however, to contact the staff for both the House and Senate to get as complete a picture as possible of what information was before the committee and why the committee made particular changes to the bill.

Hearing Testimony

Every bill filed in the General Court is, by rule, given a hearing during the legislative session.¹⁴⁶ While the committee may invite specific people to testify on a matter, these hearings are open to the public and anyone who wishes to address the committee on a matter being heard may do so. The testimony gives a reliable record of the social problem with which the legislature was wrestling, the facts it had before it, potential options, and objections to certain proposals.

Anyone may offer both oral and written testimony, although oral testimony is most common. Oral statements may be extensive or limited to just five or even three minutes due to time constraints. Committee members have an opportunity to question the witness. Committee chairmen also encourage witnesses to submit written testimony, before, during and after a hearing, which allows witnesses to go into greater detail about their positions than can be accomplished in a three or five minute oral statement. Such written statements also increase the pool of people offering an opinion on an issue. Committee staff distribute written testimony to the committee members, and often retain one or more copies for their files.

Recordings of committee hearings are fairly limited. Since 1992, the public television station WGBH has recorded selected hearings for broadcast. These recordings are archived in the State Library for public viewing.¹⁴⁷ Although there are currently no hearing recordings on the legislature's website, the legislature's broadcast services site has some video of hearings starting in April, 2007.¹⁴⁸ On the reporting side, the SHNS often covers hearings and reports on who appeared and what was said.¹⁴⁹ MassTrac also reports on the witnesses appearing on particular bills and has a "Testimony" section on its site that lists oral and written testimony for selected recent bills.¹⁵⁰

Often the best source for written hearing testimony is the committee staff. Staff will gather testimony submitted by advocates or critics of a bill and keep copies in their files. The committee staff will also often take detailed notes of hearing witnesses and what was said. Even if the committee files are incomplete or unavailable, it is often possible for the committee staff to provide a list of witnesses

for a particular hearing.¹⁵¹ A researcher could then contact the witnesses directly for a copy of their submitted testimony.

Summaries and Bill Analyses

Bills may be summarized several times during the legislative process, depending on their complexity and whether they have been amended. Committee staff summarize each bill for the committee in preparation for the bill's hearing. Most bill summaries are one page long and composed of standard information such as the bill number, sponsors, committee assignment, similar bills, the outcomes of similar bills in previous legislatures, short statements of what the relevant existing law is, and what the bill purports to do.¹⁵² Summaries may be more detailed if the bill has a high profile, is particularly controversial, or the staff anticipates the committee taking action in the near future. If a committee chooses to combine several bills into one or significantly redrafts a bill that has been previously heard, the staff will often write a summary of the new bill before it is reported from the committee. Summaries may show how a bill developed and give insight into what the legislature meant to accomplish through redrafts and amendments.

Other legislative offices may also prepare summaries. The House and Senate Ways and Means Committees may prepare summaries on both a bill's substance and its fiscal impact on the state budget. The Senate and House Counsel's offices may prepare new summaries during third reading review in preparation for a caucus or floor debate. Finally, conference committees often produce both summaries and so-called "crosswalks" while resolving the language differences between House and Senate versions of the bill. The crosswalk can be a particularly valuable document because it will summarize similar provisions from the House, Senate and Conference versions of the bill side-by-side.¹⁵³

The committee staff and the House and Senate Counsel's offices may retain copies of the various summaries produced for a bill.¹⁵⁴

Memoranda

Committee staff may also create legal and policy memoranda for the benefit of the committee chairs and other legislators. Such memoranda may summarize the positions of various advocates and offer potential compromises, summarize the staff's findings and recommendations after investigating a particular question, or lay out strategy for maneuvering a bill through the post-committee legislative process. A chair may also write a memorandum to the Speaker or Senate President explaining a bill, describing how the committee amended the bill, the policy choices made, and laying out potential courses of action for the chamber as a whole.

Although these memos could be very revealing as to legislative intent, they are meant for internal use only, and the staff may

146. See *supra* note 84.

147. State Library of Mass., *supra* note 3 at 1.10.2.

148. www.malegislature.gov/events/archivedvideo.

149. State House News Service, www.shns.com. For high-profile hearings, accounts may be found in the mainstream media such as the *Boston Globe* or *Boston Herald* and on the local television and radio stations.

150. Although MassTrac's reports on testimony before committees are becoming more extensive, the site may not contain a complete list of oral or written testimony.

151. The committee staff typically will keep the sign-in sheet for hearings that

will show who testified and the bills on which they testified.

152. Of course the quality and usefulness of a summary depends on the experience and knowledge of the staff member preparing them.

153. See MASS. GEN. CT. JOINT R. 11A. These documents are especially useful during the annual budget debate in that the crosswalks summarize the numerous "outside sections," which often make changes to the General Laws. These crosswalks may be found on the House and Senate's budget pages. See www.malegislature.gov.

154. As is the case with all committee documents, this is subject to the biennial purge at the end of one session and in anticipation of the new session. See *supra* text following note 145.

consider them confidential or even protected by the attorney-client privilege. Therefore, such documents are often withheld even if an outsider is given access to the bill file.

If available at all, these documents can only be obtained through the committee staff.

Committee Reports

In Congress, a committee's work on a bill — the hearings, witness testimony, analysis, bill language amendments and intent — are synthesized into a committee report. These reports are often the primary tool for non-committee members to understand the bill prior to floor debate, and later for courts and executive agencies to determine legislative intent. Unfortunately, reports like these are exceedingly uncommon in Massachusetts. In Massachusetts, committee "reports" of a bill given to another committee, the Senate, or the House are perfunctory; they consist of a simple card stating that a bill, group of bills or a redrafted version of a bill "ought to pass," "ought not to pass," is to be placed in a study order, or is being discharged to another committee. The card may note which committee members voted against the recommendation or abstained from the vote. Otherwise there is little information to be gleaned from these reports.

At times, a committee will release a substantive report.¹⁵⁵ The committee chair may decide to issue such a report if her staff has done a great deal of research on a subject and wishes to explain to other legislators and the public why the committee is making particular recommendations. For instance, the Public Safety Committee issued a report on gang violence in 2005 to explain its recommendations to create a witness protection program and amend several criminal statutes such as witness intimidation, perjury and misleading a police officer.¹⁵⁶

The standard committee reports are available from the House and Senate Clerks. The substantive reports are often available from the appropriate committee staff and may be archived in the State Library.¹⁵⁷ The Legislative Research Bureau's reports may be found on the New England Law School's library website.¹⁵⁸

3. Member's Letters

Legislators frequently write advocacy letters to their colleagues on bills they file or in which they have an interest. Although not as lengthy or detailed as the written testimony submitted during hearings, these letters may contain insight into the thinking of key legislators and what they hope to accomplish with a particular bill. Such letters may also shed light on how and why the bill has been changed as it moves through the legislature. A bill sponsor may write several

letters during the legislative process. For example, a sponsor may write a letter to the committee chairman requesting a hearing or proposing "friendly amendments" to the bill during the committee review; to the chair of the Ways and Means Committee concerning the bill's policy or potential costs; to the presiding officer of his or her chamber asking for a floor debate; or to a conference committee finalizing the bill's drafting. Because the relevant committee chairs remain involved with a bill throughout the process, they are often copied on the letters and retain them in their files.

A researcher should check with each of the offices where a bill stopped during the legislative process. Staff for the substantive committee, Ways and Means, and conference committee members may all retain members' letters from various points in the process.

4. Floor Debate

The floor debate on a bill can be a rich source for understanding the legislative intent behind a piece of legislation. Some members will use their floor speeches or planned colloquies with other members to establish a record of legislative intent for the benefit of agencies and courts attempting to interpret the law. The debate on amendments may be particularly instructive because it is an opportunity for members to focus on specific aspects of the bill.

The House of Representatives began video recording its formal proceedings in November, 1987,¹⁵⁹ and the Senate followed suit in January, 1996.¹⁶⁰ The State Library is the depository for the official recordings of the House and Senate and serves as a public inspection area.¹⁶¹ Currently, video of recent House and Senate floor debates are available at the legislature's website under "Archived Video."¹⁶² The legislature has another website which has broadcast services and video archives for Senate and House floor debates dating to April, 2007.¹⁶³

The SHNS reports on the House and Senate's formal session debates. Although these reports are not a verbatim or official transcript, they are extremely detailed and offer a good sense of how the debate proceeded, what arguments for and against a bill were offered to the membership, and the understanding of the various key members as to the intent and purpose of a bill.

5. Revisions to the Bill

A reliable way of discerning legislative intent is to compare various drafts of a bill to see how it evolved prior to becoming law. A joint committee's most important task may be to revise bills in light of evidence gathered during the hearing and review process and according to the committee members' priorities. Revisions in committee are often the result of negotiations between the House and

155. See <http://archives.lib.state.ma.us/bitstream/handle/2452/207364/ocm68567540.pdf?sequence=1>. In addition, the Legislative Research Bureau produced substantive research reports on a variety of issues during its existence from 1900 to 1996.

156. See Joint Committee on Public Safety, "Reducing Gang Violence in the Commonwealth of Massachusetts: Prosecution, Policing and Prevention — A Three Pronged Approach," S. Doc. 26, 184th Gen. Ct., 1st Sess. (Mass. 2005). The SJC later relied on this report as evidence of legislative intent. *Commonwealth v. Morse*, 468 Mass. 360, 368-69 (2014) (determining the scope of the crime of misleading a police officer).

157. See Siegel presentation, *supra* note 112. Special reports are indexed and catalogued by the State Library. See, e.g., *Index to Special Reports Authorized by the General Court of the Commonwealth of Massachusetts January 1994–December*

2005 (State Library of Massachusetts, 2006) and *Index to Special Reports Authorized by the General Court of the Commonwealth of Massachusetts 1988–March 1994* (State Library of Massachusetts, 1994). These documents can be found on the State Library's online catalog at www.mass.gov/lib.

158. See www.portia.nesl.edu. Northeastern has digitized the reports from 1964 to 1994.

159. The House also audio recorded its proceedings from November, 1984 until video recording began. See State Library of Mass., *supra* note 3 at 1.10.2.

160. *Id.*

161. *Id.*

162. www.malegislature.gov/events/archivedvideo.

163. www.malegislature.tv.

Senate chairs. Reading a committee redraft in light of the testimony it gathered on the issue can be very illuminating as to legislative intent. Certain provisions can be traced to a particular advocate or opponent, or may indicate that the committee members found an acceptable compromise between competing positions.

The bill may be revised several times after it leaves committee, revised again by another committee such as Ways and Means, on the chamber floor, during third reading or by a conference committee. All changes could offer significant insight into legislative intent.

The best, albeit tedious, way to determine how the bill was amended is to compare various versions of the bill provision-by-provision, and perhaps even word-by-word. For recent bills, having the various versions of the bill in electronic form certainly makes this process easier. Committee files will often contain several revisions to the original bill before it was reported by a committee, offering insight that cannot be found by comparing “official” versions of the bill. Floor amendments are particularly useful because they usually seek to do something specific to the bill, are often accompanied by a floor speech by the sponsor, and through the vote, may offer a clear statement of what the chamber thought of the change. Researchers can find these amendments in the *Journals*, in committee files, and in reports by State House News and MassTrac. Finally, materials such as crosswalk summaries from a conference committee may be extremely helpful. Committee staff often retain these documents in their files.

6. The Legislative Package

The Legislative Package contains the original bill petition with the names of all of the petitioners, various amendments to the bill, and sometimes materials created during the legislative process, such as letters of support.¹⁶⁴ The State Archives has a Legislative Package for every law passed since 1775.¹⁶⁵

7. The Governor’s Legislative Files (Bill Folder)

The Bill Folder contains materials created by the governor’s office for enacted bills. This material may include correspondence between the governor’s office and proponents and opponents of the bill, the product of any research done by the governor’s office, opinions of the governor’s legal counsel, and any other material that may have been considered by the executive branch. If the governor was involved in the formation of the bill prior to enactment, as is often the case, there may be significant materials that reveal legislative intent. The governor’s request for amendments after enactment, the

legislature’s acceptance or rejection of those amendments, and veto messages may also show legislative intent.¹⁶⁶

The State Archives retains the folders on laws created between 1964 and 2006.¹⁶⁷ The most recent folders, typically from the past two to three years, are kept in the Secretary of State’s Publications Office.¹⁶⁸

8. The Legislative History Project

In 1982, the Legislative Research Bureau called for a central repository of materials that reveal legislative intent.¹⁶⁹ The Bureau offered some possibilities for who would operate such a repository,¹⁷⁰ and called for a uniform policy on retaining relevant material, “to insure that the raw data used by the researcher, sponsor, bill drafter and other parties would be available for an extended period of time.”¹⁷¹ To date, this has not happened.

The Legislative Clinics Program at Boston University School of Law, however, has made an effort in recent years to gather and systematically store primary materials related to legislative history. Every student who has taken a legislative clinic since 2007 has chosen a recently enacted statute and gathered as much legislative history material as possible. This ongoing project serves two uses: first, it teaches the students what documents are generated during the legislative process and gives them an appreciation for how difficult gathering a complete record of a statute’s development can be; second, the resulting materials will be easily accessible to everyone on the Internet. This will allow practitioners, researchers, legislators and agencies to search primary materials to better understand the legislature’s intent. Information on Boston University Law School’s Legislative History Project may be found on Dome, the author’s web page on legislation and public policy.¹⁷²

CONCLUSION

The legislative history of a statute may be crucial to fully understand and settle ambiguities in the law. Despite the textualist critics, most judges appreciate the greater understanding that can come from examining evidence generated during the legislative process. Although Massachusetts has been a notoriously difficult jurisdiction within which to find legislative history in the past, it can and should be done wherever possible. By understanding the legislative process and knowing where to look for documents related to legislative history, valuable information can be found. Finally, innovations such as the Boston University Legislative History Project may make it much easier to access valuable legislative history documents in the future.

164. See Siegel presentation, *supra* note 112.

165. <http://www.sec.state.ma.us/arc>.

166. The Legislative Research Bureau suggested that the governor’s analysis and understanding of the meaning of the legislation may not have been shared with the legislators or widely circulated in the legislative branch, and may therefore be of limited value. See *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. (1982). Still, the governor has the constitutional powers to file legislation, offer amendments to enacted bills and veto legislation, making that office an integral part of the legislative process. The governor’s understanding of a bill, whether circulated or not, should still be considered valuable information.

167. See Siegel presentation, *supra* note 112.

168. The Publications Office also operates the State Bookstore, which is in the State House, Room 116, and which may be reached at (617) 727-2834. The public may make arrangements to view the folder.

169. *Mass. Legislative Research Bureau, Determination of Legislative Intent*, H. 172-5882, 2nd Sess. at 57 (1982).

170. The bureau suggested either the Clerk’s Offices, the Secretary of State’s Office or the State Library. *Id.*

171. *Id.* at 57-58.

172. See sites.bu.edu/dome.

APPENDIX A — CHECKLIST FOR GATHERING LEGISLATIVE HISTORY

- Assemble the needed citations: General Laws affected, Session Law citations, relevant bill numbers;
- Reconstruct the bill's complete procedural history;
- Examine the House and Senate *Journals* for the days the legislature worked on the bill;
- Contact the original bill's legislative sponsor for materials collected during the legislative process;
- Refer to MassTrac or State House News Service for reports on who testified and what was said at committee hearings;
- Contact the House and Senate staff for each of the committees that considered the legislation to find materials collected during the legislative process;
- Contact witnesses who testified at hearings to obtain copies of the written testimony submitted to a committee (if unavailable from committee staff);
- Refer to MassTrac or the State House News Service for reports on the floor debate;
- Refer to the legislature's website and the State Library to see if video of the floor debate is available;
- Assemble a complete list of amendments and whether they were adopted or rejected;
- Contact the members of the conference committee (if applicable) for materials generated during the conference process;
- Assemble the governor's official messages, amendment recommendations and veto messages and signing statements;
- Contact the governor's Governmental Affairs office or the State Archives to obtain access to the Bill Folder;
- Refer to State House News Service for related press releases or relevant audio and video files.

APPENDIX B — SOURCE CONTACT INFORMATION

- State Library: The State House, 24 Beacon Street, Room 341, Boston, MA 02133; (617) 727-2590; www.mass.gov/lib
- State Library's Special Collections: State House, Room 55; (617) 727-2595
- Massachusetts State Archives: 220 Morrissey Boulevard, Dorchester MA; (617) 727-2816; Email: archives@sec.state.ma.us. Website: <http://www.sec.state.ma.us/arc>
- Secretary of State's Publication Office and State Bookstore, State House, Room 116, (617) 727-2834
- Governor's Governmental Affairs Office: State House, Room 161; (617) 725-4005
- The legislature's website: www.malegislature.gov
- Senate President's Office: State House, Room 332; (617) 722-1500; www.mass.gov
- Senate Clerk's Office: State House, Room 335; (617) 722-1276
- Senate Counsel's Office: State House, Room 200; (617) 722-1470
- Speaker of the House's Office: State House, Room 356; (617) 722-2500
- House Clerk's Office: State House, Room 145; (617) 722-2356
- House Counsel's Office: State House, Room 139; (617) 722-2360
- State House News Service: State House, 24 Beacon Street, Room 4XX, Boston, MA 02133; (617) 722-2439; www.statehousenews.com.
- InstaTrac / MassTrac: www.instatrac.com; (617) 292-1800