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Charges in alleged child malnourishment case will be refilled

BY L. L. LEHANS LLEHANS@HOLDENLANDMARK.COM

HOLDEN — The reckless child endangerment charges against Holden couple Joshua J. and Kellie Theriault were dismissed on an administrative technicality in Leominster District Court on Aug. 27.

But Judge John J. Curran Jr. immediately scheduled a show-cause hearing in October before a clerk magistrate, where Holden Police Chief George R. Sherrill says the department will refile the charges against the 1588 Main St. couple.

The couple was charged with endangering their then 2-year-old son after a Holden police officer, acting on an anonymous tip to the state Department of Social Services, went to the home in February. The officer noticed bruises on the boy's face, and that he appeared to be severely underweight. The child, now 3, weighed 17 pounds.

The boy was hospitalized at UMass-Memorial Medical Center, and then placed in state foster care, where he reportedly has gained weight.

Court records indicate that a doctor at UMass declared it the worst case of malnutrition she had ever seen, and that the boy would have died if not removed from the home. His family doctor, William J. Blake, noted that it was a case where the boy was small in height

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and weight from birth.

The October show-cause hearing will focus on medical testimony, and according to the Clerk of Courts in Leominster, will not be open to the public.

At last week's arraignment, defense attorney Thomas G. Guiney said the boy "is kind of small in the spectrum in height and weight" and acknowledged that his clients "probably waited a bit too long to get treatment."

"They are not criminals, Your Honor," Guiney said. He said Blake examined the child and determined there was nothing criminal about the parents' action.

"They could have been a little pro-active. There is a difference in medical opinions," Guiney said.

The couple was present for the arraignment, but made no statement.

The judge asked assistant District Attorney Anthony Marotta if the child is currently in the home, and was advised he's still in foster care. Marotta said the Holden Police Department will refile the charges.

Curran noted that child endangerment is a misdemeanor, and under state law, the couple is entitled to a show-cause hearing before an arraignment in district court.

On Tuesday morning, Sherrill said the case was dismissed due to an administrative technicality.

"It had to do with a box not checked (on the arrest form), on whether the child was in imminent danger," he said.

Sherrill said because the child by that time was in DSS custody, his situation was not considered "imminent."

"The District Attorney wanted it dismissed and refiled," Sherrill said, "with the certainty that it will go forward."

He said no medical or other affidavits can be released at this point, but was surprised to hear the show-cause hearing will be behind closed doors. He said the reason is probably due to the sensitive nature of the case, involving a minor child.

Holden Det. Christopher J. Carey will attend the hearing, Sherrill said. If the judge

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magistrate finds there's probable cause to move the case forward, there's the possibility of an indictment or new charges.

Sherrill said the judge magistrate could make a determination at the hearing, or take the case under advisement.

It will be up to the DA's office on what would happen next, Sherrill said.

"It possibly could go to the grand jury," he said. "It's the DA's call."

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