

SENATE No. 68

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regarding families and children engaged in services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	Second Middlesex and Norfolk
Paul J. Donato	35th Middlesex
Richard T. Moore	Worcester and Norfolk
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Susan C. Tucker	Second Essex and Middlesex
Tom Sannicandro	7th Middlesex
David P. Linsky	5th Middlesex
Benjamin Swan	11th Hampden
Ellen Story	3rd Hampshire
Joyce A. Spiliotis	12th Essex
Kay Khan	11th Middlesex
Cleon H. Turner	1st Barnstable
Mark C. Montigny	Second Bristol and Plymouth
Thomas A. Golden, Jr.	16th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02570 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGARDING FAMILIES AND CHILDREN ENGAGED IN SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws as appearing in the 2006 official edition are hereby amended by
2 adding after chapter 6A section 16G the following new section:

3 Section 16H. Community-based services for families and children

4 1. *Whereas* families in the Commonwealth whose children are truant, runaway and acting in a
5 fashion that interferes with their parent's ability to adequately care for and protect said children
6 are families in crisis; and

7 *Whereas* the issues facing said children and families are complex and the services which would
8 best assist such families are not always available from a single agency or department of the
9 Commonwealth and the collaboration among multiple public and private agencies and offices is
10 required to ensure that all children and families receive the services they need to succeed; and

11 *Whereas* the current efforts to help said children and families lack accountability and
12 consistency; and

13 *Whereas* services are not consistently available in all communities;

14 *Therefore*, it shall be the policy of the Commonwealth to develop a flexible, consistent, and

15 accountable system of community-based programs to assist said children and families.

16 2. It is the intent of the General Court to create an accountable, community-based system that
17 provides consistent services throughout the Commonwealth to address the needs of families and
18 children in crisis by providing them with an array of resources. The goal of said system is to
19 preserve and strengthen families while ensuring the healthy emotional, mental, and social
20 development of the child. These services shall focus on creating a stable environment and
21 strengthening the family as a whole while emphasizing parental responsibility.

22 Said community-based system shall provide the family and child with immediate responses for
23 the stabilization of the family, as well as to connect the family to additional services in the
24 community through referrals and advocacy. The services provided to the families and children
25 involved shall be provided on a continuum of increasing intensity with the goal of keeping the
26 child out of the juvenile justice and child protection systems. The system shall include a
27 mechanism for the collection and analysis of information which will enable the Commonwealth
28 to evaluate the effectiveness of services and to identify gaps in services. It is the intent of the
29 General Court to reserve judicial intervention for those children and families who require
30 services beyond said community-based services in order to achieve stabilization and resolution.

31 3. For the purpose of this Section the following words shall have the following meanings:

32 ‘Child requiring assistance’: a child between the ages of 6 and 18 who repeatedly runs away
33 from the home of his parents or legal guardian or repeatedly fails to obey the lawful and
34 reasonable commands of his parents or legal guardian, thereby interfering with said parent’s or

Commented [MSOffice1]: We have not discussed this issue with you this session, but we do not believe that it is appropriate for the court, given its limited resources, to oversee 17-year-olds who are alleged to have run away or who allegedly fail to obey lawful and reasonable rules at home. We also believe that the age range for school-based cases should remain 6 to 16 until the school attendance law is changed. We recognize, however, that it may be appropriate for Community Service Agencies to work with older youth and their families who are not subject to Juvenile Court jurisdiction.

35 legal guardian's ability to adequately care for and protect said child or repeatedly fails to obey
36 the lawful and reasonable regulations of his school or who is habitually truant;

37 "Community Service Agency": a community-based organization providing services under
38 contract with the Commonwealth, whose function is to facilitate access to and ensure
39 coordination of services for families with children with serious emotional disturbance who
40 require or are already utilizing multiple services, or are involved with multiple child-serving
41 systems including, but not limited to, the juvenile justice system, department of mental health,
42 and special education, as agreed upon under the settlement dated August 29, 2006 entered into
43 by the parties of Rosie D. et al v. Romney civil action No. 01-30199-MAP filed in the United
44 States District Court.

45 'Family with children requiring assistance': the parents, guardians, siblings, and any other
46 relatives or caretakers responsible for a child between the ages of 6 and 18 who need assistance
47 from state, local, or private agencies, or providers of social, educational health, mental health, or
48 behavioral health services in order to adequately care for and protect the child;

49 'Habitually truant': a child between the ages of 6 and 18 not otherwise excused from attendance
50 in accordance with the lawful and reasonable regulations of his school who **willfully** fails to
51 attend school for more than 8 school days in a quarter;

52 'Secretary': the secretary of the Executive Office of Health and Human Services.

53 4. (a) The secretary, in consultation with the Commissioner of the Department of Children and
54 Families, the Commissioner of the Department of Youth Services and the Commissioner of the
55 Department of Mental Health, shall establish a network of child and family service programs
56 throughout the Commonwealth to provide community-based services to all children and families

Commented [MAJP2]: for the front-end absence does not have to be willful - e.g. the child too depressed to get to school.

57 who are at risk of contact with the juvenile justice system or the child protection system, families
58 with children requiring assistance, and children who require assistance.

59 1. Except as provided in clause 2., the secretary shall enter into contracts with the Community
60 Service Agencies (CSAs) who shall act as Community-Based Service Centers, to implement the
61 program and provide services which are within their capacity.

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62 2. In circumstances where, in the judgment of the secretary, the CSA is not the appropriate
63 selection for the Community-Based Services Center, the secretary may select another entity as
64 the Community-Based Service Center based on proposals submitted by a local school or other
65 local public agency or private organization or medical or mental health care providers.

Commented [MSOffice3]: Moved from line 106.

66 3. The Community-Based Service Centers shall be permitted, subject to approval by the
67 Secretary, to subcontract with other local providers as needed to provide the full complement of
68 services required under paragraph 8 of this section.

69 (b) The purpose of the community-based services program shall be to assist families so that
70 children will be able to continue residing with their families in their home communities; assist
71 families to enable children to continue as students in their community schools; strengthen the
72 relationships between children and families; and provide coordinated, comprehensive,
73 community-based services for children at risk of dropping out of school delinquency, or
74 engaging in behaviors which impede the likelihood of their leading healthy, productive lives.

75 (c) The secretary shall:

- 76 (i) design models for delivery of community-based services by community-based
77 organizations and collaborations of public and private organizations;
78 (ii) pilot alternative systems to address the problem of children running away from their

80 parents or legal guardians;

81 (iii) develop standards necessary to achieve and maintain on a statewide basis

82 comprehensive and integrated community-based services for children and families;

83 (iv) monitor and provide technical assistance to providers of community-based services;

84 (v) adopt a standard intake screening and assessment tool to evaluate all families and

85 children seeking community-based services which identifies the family's strengths,

86 resources, and service needs such as mental health, behavioral health, or substance abuse

87 treatment, basic family shelter, clothing and food needs, child care needs, health

88 insurance status, legal issues, education placement, and child protection;

89 (vi) create a data collection system for use by programs which maintains the privacy of

90 clients served, assists programs and the executive office of health and human services in

91 addressing the needs of the population to be served, collects information related to,

92 among other things, the insurance status and benefit coverage of clients served, income

93 documentation as needed to apply a sliding fee scale for payment or waiver of payment

94 for services, and other information that may assist the program and the secretary in

95 providing services, identifying service needs and gaps, and evaluating the effectiveness

96 of community-based services.

97 5. (a) Subject to appropriation, the secretary shall make grants for the purpose of planning,

98 establishing, operating, coordinating, and evaluating Community-Based Service Centers. At least

99 one grant shall be awarded for the operation of a community-based services program in each of

100 the 29 Department of Children and Families service areas. Additionally, two grants shall be

101 awarded for runaway treatment and prevention programs, one in an urban location and one in a

102 rural location. Grants may award funding for up to five years subject to demonstration of

Deleted: centers, which will provide community-based services

104 effectiveness and the submission of annual reports to the secretary.

105 (b) Preference in awarding the grants shall be given to the CSA for the service area wherever the

106 experience and resources of the CSA will promote efficiency and increased access to services.▼

107 (c) The secretary shall issue requests for proposals for the provision of community-based

108 services. Proposals must demonstrate expertise in assisting children and families who are at risk

109 of contact with the juvenile justice system or the child protection system and program staffing

110 which meets the credentialing and caseload criteria as defined by the secretary. Proposals shall

111 also require that applicants submit:

112 (i) A plan for development, implementation and coordination of direct services as

113 required under paragraph 8 of this section for families from public and private providers;

114 (ii) A plan for the establishment of a local advisory board which, wherever possible, shall

115 be a subcommittee of the Systems of Care Committee required of all CSAs to focus on

116 the needs of families and children at risk of involvement in the juvenile justice system

117 and the child protection system. The subcommittee shall include: representatives from

118 school districts, police officers, juvenile probation officers, district attorneys, attorneys

119 who represent children and parents, mental health clinicians, behavioral health providers,

120 parents and youth. The committee may also include local religious organizations,

121 representatives of local businesses, higher education, social service agencies, public

122 health agencies and other persons with experience in assisting youth and families in

123 crisis. Membership shall be broadly representative of the racial, ethnic and economic

124 diversity of the community. The local advisory boards may, where necessary to facilitate

125 work in communities, create similarly constituted work groups for each municipality in

126 the service area;

Deleted: In circumstances where, in the judgment of the secretary, the CSA is not the appropriate selection for the Community-Based Services Center, proposals may be submitted by a local school or other local public agency or private organization or medical or mental health care providers.¶

(iii) Periodic evaluation of the success in achieving program goals a process for making adaptations and improvements based on evaluation information.

6. (a) Community-based services shall be available to children between the ages of 6 and 18 who are habitually truant or children between the ages of 6 and 18 who run away from the home of their parents or legal guardian or refuse to obey the lawful rules of their parents or legal guardian or repeatedly fail to obey school rules and to families whose children engage in such behaviors.

(b) Whenever the staff of the program offering community-based services determines that a family seeking or referred for services for a child has significant and complex medical needs which cannot be met by the program or where the child's behavior presents a significant risk of harm to the child himself, the family or the community, the child and family shall be referred to other services pursuant to paragraph 5 of this section.

(c) Where a youth has been charged with a delinquency offense or is an adjudicated delinquent, eligibility for participation in community-based services shall be determined by the program administrator after a review of the facts surrounding the alleged offense by a team consisting of: a community-based services caseworker, probation officer, family members and the counsel representing the child in the delinquency matter.

(d) Where the child is in the custody of the department of children and families and residing in an out-of-home placement, eligibility for participation in community-based services shall be determined by the program administrator after a review of the facts surrounding the placement by a team consisting of the community-based services caseworker, the department of children and families caseworker, a responsible adult with whom the child has an ongoing connection, and, if the custody based on an order in a proceeding under c. 119, any counsel representing the child in that proceeding.

Commented [MSOffice4]: Which "other" services? I don't see a reference in par. 5 to which this might relate.

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156 (e) Where a child or family is denied access to community-based services for reasons other than
157 those described in this section, the program shall provide the child and his or her parent,
158 guardian, or custodian a written explanation of reasons for exclusion and the identification of
159 other community-based services and resources available to them.

160 (f) When a child or family is denied services pursuant to this section, the program shall contact
161 the child and his or her parent, guardian, or custodian in person or by telephone within two
162 weeks after the denial decision to determine if the other appropriate services have been obtained
163 and whether or not community-based services are now appropriate. The program shall provide to
164 the child and his or her parent, guardian, or custodian a notice in a form acceptable to the
165 juvenile court stating that the family is not eligible for community-based services and listing the
166 reasons for ineligibility.

167 (g) The notification requirements in pars. (e) and (f) does not apply to a parent, guardian, or
168 custodian if the child has sought community-based services but the parent, guardian, or custodian
169 has not.

170 7. (a) A child or family may seek assistance from a community-based services program directly
171 and without referral.

172 (c) Employees of the departments of children and families or youth services may make referrals
173 to Community-Based Service Centers as part of a case plan.

174 (d) Voluntary referrals to community based services may be made by any professional who is
175 working with the family or child(ren).

176 (e) School administrators must refer children or families to community-based services prior to
177 expelling them for failure to comply with the lawful and reasonable rules of the school or for

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Deleted: (b) Pursuant to Section 39R and 39U of Chapter 119, families may be ordered to seek services from a Community-Based Service Center by a probation officer or judge. ¶

183 habitual truancy. Provided that when a school administrator refers a child for habitually truant
184 behavior, it must be shown that the school, child, and family have completed a department of
185 education certified truancy program, if such a program is available at the school. Whenever a
186 child or family seeks assistance for habitually truant behavior, the program staff shall assist the
187 family in gaining access to the child's school's department of education certified truancy
188 program.

189 8. Community-based services shall include, but are not limited to:

190 (i) program representatives available to respond to requests for service 24 hours a day, 7
191 days a week;

192 (ii) initial response to referral or request for services by a family or child, which includes
193 a meeting to determine the circumstances which resulted in the request or referral, within
194 six hours of contact;

195 (iii) a plan for stabilization of any crisis which initiated the referral or request within a
196 reasonable time;

197 (iv) assessment and screening of each person requesting services and, if possible, all
198 family members residing in the household using the standard intake tool as established by
199 the secretary pursuant to paragraph 4(c)(v) within seventy-two hours of the referral or
200 request. The person conducting the assessment and screening must note the reasons why
201 any family member was not screened within seventy-two hours of the initial request and
202 must complete the screening process for all family members residing in the household
203 within one week of the initial referral;

204 (v) assignment of a case manager to each family upon assessment;

205 (vi) creation of a family service plan within ten working days from initial contact, which

Commented [MSOffice6]: As I noted in the letter that I sent in July, education experts are growing increasingly skeptical about excluding students from school under any circumstances based on truancy.

Deleted: , and the outcome of the services shall be considered as part of any decision to expel for these violations...

Commented [MSOffice8]: This suggests that the program is a time-limited service to a family. While a truancy prevention program may, in a given case, involve short-term intervention with a family, the program should be a comprehensive one designed to ensure that the educational needs of all children in the school are met, regardless of the extent of the family's involvement. To illustrate, an effective truancy prevention program will intervene well before a child starts missing school if the student is at risk of becoming truant. That intervention should involve the family; but even if the family does not participate, the school must make reasonable efforts to reduce the risk of truancy and help the child succeed at school.

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includes: strength-based assessment and statement of family needs presented; needs of the child; needs of the parents, legal guardian or legal custodian; measurable objectives that address the identified needs; services and treatment to be provided by the community-based services program or to which the family and child will be referred, which may include but are not limited to: community, medical, mental health and behavioral health services, assistance with obtaining special education evaluation and services and remedial education services, assistance with insurance coverage issues; recreational services; mediation and family group conferencing. For each service or treatment included, the plan shall contain a statement clearly identifying the type of services or treatment, frequency of services or treatment, location of responsible service providers or staff, and timeframes for achieving the plan objectives. The service plan shall be reviewed and agreed upon by the family before implementation;

(vii) periodic review of the family service plan by the case manager and the family to determine whether it is being followed and if it is effective;

(viii) intensive crisis counseling for both children and families;

(ix) parent training in appropriate skill areas directly related to the needs of the family;

(x) data collection in a format as required by the secretary for each referral or request, which protects the privacy of the individuals seeking services while providing a means to insure that information necessary to optimize the likelihood of successful outcome for each person seeking services and to permit the evaluation of the effectiveness of the program;

(xi) compilation and dissemination to the general public of information about family support resources and services available in the community;

Commented [MSOffice9]: Isn't this already included in (xv)?

- (xii) crisis intervention residential placements for children for up to 72 hours;
- (xiii) voluntary respite residential placement of the child for up to 21 days; and
- (xiv) mediation or alternative dispute resolution.
- (xv) The program shall make available to the public information that identifies a variety of community-based educational, social, medical, mental health and behavioral health services available to assist families and children.

9. (a) Participation in community-based services shall be pursuant to a voluntary agreement of the parent or legal guardian and the child. Families or children may terminate their involvement at any time.

(b) Services may be provided for 120 days. After the initial 120 day period families or children and the community-based services program case manager may agree to extend services for up to an additional 90 days.

(c) Covered services shall be billed to the insurance provider for the client.

(d) The program shall advise the parents or legal guardian that they may be responsible for co-payments for covered services and for contributing to the cost of non-covered services for the child or family. Allowable rates for services not covered by insurance, including the portion for which parents will be held responsible, shall be set by the secretary and periodically adjusted as needed to meet actual costs.

(e) In the absence of the consent of a parent or legal guardian, respite care may be provided to a child pursuant to the provisions and subject to the limitations of chapter 119 section 23 paragraph 7.

253 10. (a) Each family shall have a case manager who shall be responsible for working with the
254 family to develop a crisis stabilization plan where warranted and a family service plan;
255 coordinating services; assisting the family to resolve administrative issues including issues with
256 insurance coverage, interagency issues and other issues which serve as barriers to successful
257 implementation of the service plan; facilitating communication between providers as authorized
258 by the child or their parent or legal guardian; implementing resolution processes when necessary;
259 and working with the case staffing team to create an after care plan.

260 (b) The composition of the case staffing team shall be based on the needs of the family and child
261 and be chosen after consultation with the child and their parent or legal guardian. It shall include
262 the case manager, the primary providers of services to the child and family, a representative from
263 the child's school district. The case staffing team may also include other individuals with
264 professional expertise in health care, mental health care, behavioral health care, substance abuse,
265 social or educational services, or other persons recommended by the child or his or her attorney,
266 parent or legal guardian, or case manager.

267 (c) The service engagement team shall be comprised of the Director of the Community- Based
268 Service Center or their designee, members of the local advisory board and other professionals
269 who are charged with developing engagement strategies for the Center and, *at the request of the*
270 *child, parent or guardian, or the case manager*, addressing barriers to the initial engagement of
271 individual children and their families.

272 (d) The case manager shall, in consultation with the family, develop a family service plan which
273 shall be provided to the child and their parent or legal guardian and other family members
274 requiring assistance who are involved in the plan within ten days of the initial referral. Upon

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Commented [MSOffice10]: I'm not sure what this team does. Also, it's not clear what the text that I've italicized means or what it relates to.

Commented [MSOffice11]: Can you specify that services should be offered in the primary language of the child or parent?

275 receipt of the plan, the child and each family member named in the plan shall accept or reject the
276 services and provisions in writing. Each service provider identified in the plan shall also accept
277 or reject their participation in writing. If the plan is accepted, it shall be implemented
278 immediately. If the child or family is not in agreement with the plan and attempts by the case
279 manager to develop an alternative plan are unsuccessful or when the services required are not
280 available, the child, their parent or guardian or the case manager may request review by the
281 service engagement team who shall assist the case manager, child and family in developing an
282 alternative plan.

283 (e) The case manager and the family shall be equally responsible for implementing the plan. The
284 case manager, the family and child shall periodically review the progress towards achieving the
285 objectives of the plan in order to:

- 286 (i) advise the case staffing team of the need to make adjustments to the plan; or
287 (ii) terminate the case as indicated by successful or substantial achievement of the
288 objectives of the plan.

289 (f) The case manager shall request a meeting of the family and child at a time and place that is
290 convenient to them with a case staffing team to review the family service plan of any family or
291 child whenever:

- 292 (i) the family or child is not in agreement with the services or treatment offered; or
293 (ii) the family or child does not participate in the services or treatment selected; or
294 (iii) a school state agency or private service provider does not provide the services or
295 treatment selected; or
296 (iv) the case manager needs assistance in developing an appropriate plan for the provision

and funding of services; or

(v) there is cause to believe that continuation of services is no longer appropriate because the child has complex medical needs which cannot be met by the program or where the child's behavior presents a significant risk of harm to the child himself the family or the community.

(g) The parent or legal guardian or child who is over the age of 16 or any other member of the case staffing team may make a written request that the case manager convenes a resolution meeting at any time if the member finds that doing so is in the best interest of the family or child. A resolution meeting requested by a parent or legal guardian or child who is over the age of 16 must be convened within 7 working days from the date that the case manager receives the request in writing.

11. (a) Not more than 110 days after the assessment and screening of a child and family referred to or requesting community-based services, or 10 days prior to any extension of services granted under paragraphs c and d of this section, the case manager shall convene a resolution meeting with the case staffing team to assess whether the goals of the family service plan have been achieved or if further services are in the best interest of the family and child. After the meeting the case manager shall document the resolution of the case as follows:

(i) that the family and or child will benefit from additional community-based services; or

(ii) that it is unlikely the family and child will benefit from additional community-based services at this time and the case is discharged; or

(iii) that the family failed to cooperate with the service plan and the case is discharged; or

318 (iv) that the public or private agencies designated in the plan to provide specific
319 services did not provide those services and the case is discharged; or
320 (v) that the presenting behaviors are resolved and the case is discharged.

321 (b) Within 7 days after meeting, the case manager shall provide the parent or legal guardian with
322 a written report that details the reasons for the decisions made at the resolution meeting. The
323 report shall contain a notice in a form acceptable to the juvenile court stating that community-
324 based services have terminated and whether or not the case manager believes it is likely that the
325 child and family would benefit from further services.

326 (c) If the family, child and case manager agree to extend services, then the services shall be
327 extended for an additional 90 days.

328 (d) If the family was referred to community-based services by a court or a probation officer, then
329 services may be extended for additional 90 day periods at the request of the court or probation
330 officer.

331 12. (a) The report and any documentation of services provided to the family and child shall not
332 be public records. Statements made by the family and child while receiving services from the
333 program shall be treated as confidential. Such statements may not be used in school disciplinary
334 proceedings, or in any court proceeding, without the child's written consent.

335 (b) Any person offering community-based services to children under this program shall be
336 required to report suspected physical or emotional abuse or neglect of a child pursuant to General
337 Laws Chapter 119 Section 51A.

338 (c) Notwithstanding any provision to the contrary, in the absence of specific written directive
339 from the child and or member of the family who is receiving service, information about the case,

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346 including interactions with service providers and protected health information services, may be
347 shared among members of the case team as needed to coordinate treatment and provide
348 appropriate case management.

349 13. There shall be an advisory council appointed by the secretary, which shall advise the
350 secretary on creation, operation, and effectiveness of the community-based services
351 program. Members shall include the commissioners or their designees of the departments of
352 public health, mental health, developmental services, children and families, youth services,
353 transitional assistance, elementary and secondary education and public safety, the director of the
354 office of Medicaid or his designee, the commissioner of probation or his designee, the chief
355 justice of the juvenile court or his designee, a district attorney, members of the bar who represent
356 children in juvenile court proceedings, a designee of the committee on public counsel services,
357 an education advocate, representatives of urban, suburban, and rural municipal police
358 departments and school districts, providers of service to children and families, parents, and at
359 least 2 young adults who have participated in a community-based services program.

360 14. The secretary shall report annually on February 1 to the joint committee on children, families
361 and persons with disabilities and the house and senate committees on ways and means and the
362 child advocate on the progress of the community-based services program.

363 SECTION 2: Chapter 69 of the General Laws is hereby amended by adding after section 1N the
364 following new section:

365 Section 1O. Within three years of the effective date of this act, the department shall, subject to
366 appropriation, establish a discretionary grant program to assist schools in planning and
367 implementing truancy preventions programs which meet the certification requirements
368 established pursuant to section 1P of Chapter 69.

Commented [MSOffice12]: for

Deleted: 16. The secretary shall report annually on February 1, to the joint committee on children, families and persons with disabilities, the house and senate committees on ways and means, and the child advocate on the progress of the community-based services program....

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Commented [MSOffice14]: The three-year delay for the grant program is not intended to suggest that the truancy prevention programs should wait that long -- is it?

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377 SECTION 3: Chapter 69 of the General Laws is hereby amended by adding after section 10 the
378 following new section:

379 Section 1P

380 1. No later than 120 days after the effective date of this act, the Department of Elementary
381 and Secondary Education shall promulgate regulations establishing a truancy prevention program
382 certification process. The regulations shall require, among other things, that the truancy
383 prevention program address the conditions that may make students more likely to become truant,
384 including unidentified special education needs, bullying and harassment, the level of out-of-
385 school support for students and families, and students' lack of engagement with school programs
386 and staff.

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387 2. No later than 180 days after the effective date of the regulations, each school district shall
388 establish a truancy prevention program which meets the requirements for certification by the
389 department. .

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390 SECTION 4: Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to
391 39J, inclusive, and adding the following new sections:

392 Section 39K. Definitions

393 “Child requiring assistance”, a child below the age of 17 who repeatedly runs away from the
394 home of his parents or legal guardian, or repeatedly fails to obey the lawful and reasonable
395 commands of his parents or legal guardian, thereby interfering with said parent’s or legal
396 guardian’s ability to adequately care for and protect said child, or a child who is between the

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401 ages of 6 and 16 who repeatedly fails to obey the lawful and reasonable regulations of his school,
402 or who is a habitually truant;

Commented [MSOffice15]: I understand that Sen. Spilka wants to change the mandatory school attendance law, but I think that this age range should be the same as it is in current law until the mandatory school attendance law is also changed.

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403 ‘Family requiring assistance’, the parents, guardians, siblings and any other relatives or
404 caretakers responsible for a child between the ages of 6 and 18 who need assistance from state,
405 local, or private agencies or providers of social, educational, health, mental health, or behavioral
406 health services in order to adequately care for and protect the child;

407 “Habitual truant”, a child between the ages of 6 and 16, not otherwise excused from attendance
408 in accordance with the lawful and reasonable regulations of his school, who willfully fails to
409 attend school for more than 8 school days in a quarter;

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410 “Parent”, includes a legal guardian or other person legally responsible for a child’s care.

411 Section 39L. Jurisdiction

412 The Juvenile court department has original and exclusive jurisdiction over any proceeding
413 commenced under section 39N alleging that a family or child requires assistance.

Commented [MSOffice16]: We strongly support having all of these proceedings AND all care and protection cases heard in juvenile courts. Unfortunately, under chapter 278 of the laws of 1995, the District Courts in Gloucester and Brookline continue to hear C&P and CHINS cases, and, because of the language in chapter 278, they would continue to do so notwithstanding this provision. I would greatly appreciate the opportunity to work with you to address this problem.

414 Section 39M. Nature of the Proceedings

415 1. Proceedings pursuant to sections 39K to 39X, inclusive, shall not be deemed criminal
416 proceedings and any record of these proceedings, including the filing of a request for assistance
417 and creation of a docket, shall not be entered in the Criminal Offender Record Information
418 System.

419 2. Proceedings pursuant to sections 39K to 39X, inclusive, shall be confidential and not be open
420 to the public.

423 Section 39N. Request for Assistance

424 1. A proceeding to determine whether a child or family requires assistance is commenced by the
425 filing of a request for assistance, stating the petitioner's information and belief:

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426 (a) that one of the following are true:

427 (i) the child is under the age of 17 and repeatedly runs away from the home of his
428 parents or legal guardian or repeatedly fails to obey the lawful and reasonable commands
429 of his parents thereby resulting in said parent's inability to adequately care for and protect
430 said child, or

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431 (ii) the child is between the ages of 6 and 16 and is habitually truant or repeatedly fails to
432 obey the lawful and reasonable regulations of his school;

433 (c) specific acts on which the request for assistance is based and the time and place they
434 are believed to have occurred;

Deleted: (b) that the child was under the age of 18 at the time the specified acts took place;

435 (d) when the petitioner is a school district, the request for assistance shall also include:

436 (i) if the request for assistance alleges that a child is habitually truant, a
437 statement of the actions taken by the school district to comply with its
438 obligations under its truancy prevention program certified pursuant to
439 chapter 69, section 1O and to improve the school attendance of the
440 child. The request for assistance shall also state whether the child and
441 his family have participated in the truancy prevention program.; and

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(ii) if the request for assistance alleges that the child has repeatedly failed
to obey the lawful and reasonable regulations of the school, a statement
of the specific steps taken by the school to improve the child's conduct.

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(e) that the child and family require assistance.

2. The following persons may file a request for assistance under this section:

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(a) a police officer, but only if the request alleges that the child repeatedly runs away
from the home of his parents or legal guardian;

(b) a parent;

(c) a school district, but only if the request alleges that that the child is habitually truant
or repeatedly fails to obey the lawful and reasonable regulations of the school;

3. The petitioner shall attach to the request for assistance the notice of termination of
community-based services as provided for in chapter 6A, section 16H(11)(b) or notice of
ineligibility as provided for in chapter 6A, section 16H(e). Except as provided below, the clerk
shall not accept for filing any request for assistance that does not have attached thereto said
notice of termination or ineligibility. Any person or agency seeking to file a request for
assistance pursuant to this section which does not have attached thereto the notice of termination
of community-based services shall be referred by the clerk of the court to the program designated
by the secretary of the executive office of health and human services to provide community-
based services in the juvenile court district where the child resides. If the petitioner is a police
officer, the clerk may accept a written statement of the reasons for the officer's belief that the

472 referral to community-based services prior to filing the request for assistance would present a
473 risk of harm to the child or others in lieu of the notice of termination or ineligibility. The clerk
474 shall then immediately contact the designated community-based services to provide notice that a
475 request for assistance has been filed. If the petitioner is a parent, then the clerk may accept a
476 written statement of the parents' reasons for the parents' belief that referral to community based
477 services prior to filing the request for assistance would present a risk of significant harm to the
478 child, family or community. The court shall then immediately review the request for assistance
479 and if the court finds that referral of the family and child to community based services is likely to
480 result in said harm, then the court shall order the creation of a docket for the matter and assign a
481 probation officer to conduct an immediate inquiry and report to the court with advice on how to
482 proceed to obtain assistance for the child.

483 Section 39O Notice

484 1. Except as provided in subsection 2, on the filing of a request for assistance pursuant to this
485 section, the court shall cause a copy of the request for assistance and a summons to be issued,
486 requiring the child and each parent to appear in court, at a time and place named, to address the
487 request for assistance.

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488 2. In proceedings commenced by a parent the court shall cause a copy of the request for
489 assistance and notice of the time and place to be heard to be provided to the parent when the
490 request is filed. The court is not required to issue a summons to either parent in such a case if the
491 parents are living together. If the parents are not living together, the court shall cause a copy of
492 the request for assistance and a summons to be issued, requiring the child and the parent who did

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not initiate the request for assistance to appear to address the request for assistance at the court at a time and place named.

3. A copy of the request for assistance served or provided under subsection 1 or 2 shall be accompanied by a notice that, in the event that the court deems it necessary to place the child in the care and custody of the department of children and families, said parent may be named as a respondent in any child support proceeding brought in connection with the child's care

4. Unless service of the summons required by this section is waived in writing, such summons shall be served by a constable or police officer, either by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

Section 39P Scheduling the Fact Finding Hearing

The clerk shall set a date for a fact finding hearing no more than 90 days from the date the request for assistance is filed. If at any time prior to the hearing the parents, child, petitioner and probation officer agree, the fact finding hearing may be postponed for an additional 90 days after the expiration of the initial 90 day period.

Section 39Q Appointment of Counsel

1. When the request for assistance is filed the child shall be informed that he has a right to counsel at all hearings, and if said child is not able to retain counsel, the court shall appoint counsel for said child. The court shall appoint counsel for the child when the request for

518 assistance is filed. The clerk shall cause a copy of the request for assistance and notice of the
519 time and place of the fact finding hearing to be delivered to counsel at the time of appointment.

520 2. When the request for assistance is filed, each parent or legal guardian of the child shall be
521 informed that he has the right to participate as a party in any proceeding under sections 39K to
522 39X involving his child and that he has the right to counsel at any hearing or proceeding
523 regarding custody of his child. If said parent or legal guardian is financially unable to retain
524 counsel, the court shall appoint counsel for said parent or legal guardian.

525 3. The court shall determine whether the parent or legal guardian of a child alleged to require
526 assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the
527 court shall assess a \$300 fee against the parent or legal guardian to pay for the cost of counsel
528 appointed for the child. If the parent or legal guardian is determined to be indigent but is still
529 able to contribute toward the payment of some of said costs, the court shall order the parent or
530 legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child.

531 Section 39R Preliminary Inquiry by Probation

532 1. The chief probation officer or his designee shall conduct a preliminary inquiry to determine
533 whether in his opinion the best interests of the child and family require that crisis intervention
534 services be provided to the child and family.

535 The probation officer in his discretion may:

536 (a) refer the family and child to the program designated to provide community-based
537 services for this juvenile court division; the probation officer may confer with the

provider of community-based services to resolve the situation which formed the basis of the request for assistance;

(b) refer the child to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services;

(c) conduct conferences with the child, the child's family and the petitioner for the purpose of effecting adjustments or agreements which are calculated to resolve the situation which formed the basis of the request for assistance. Information obtained by the probation officer may be used in the present proceeding but is otherwise confidential and may not be used in school discipline proceedings or in any other court proceeding;

(d) if the child or his parents fail to participate in good faith with the referrals or conferences arranged by the probation officer or if the probation officer is not able to refer the child or his parents to an appropriate public or private organization which is willing and able to provide appropriate services, the probation officer shall so certify in writing and present these findings to the court.

2. (a) The probation officer shall gather information concerning the child and family which in both substance and format is compatible with and complementary to the information gathered by programs providing community-based services pursuant to section 16H of chapter 6A.

(b) The Commissioner of Probation shall establish a data collection system for use by probation officers assisting children pursuant to sections 39K through 39X which maintains the privacy of clients served, assists the court in addressing the needs of the population to be served, and collects information related to, among other things, the racial and ethnic identity of the child, the

559 insurance status and coverage of clients served, and other information that may assist the
560 commissioner and the court in evaluating the availability and effectiveness of services for
561 children who are the subjects of requests for assistance pursuant to this section.

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562 (c) The Commissioner of Probation shall report annually to the Child Advocate on the assistance
563 provided by probation officers to children and families under Sections 39K to 39X. The report
564 shall be filed on October 1 of each year and shall include for each juvenile court district: the
565 number of children and families receiving assistance, their racial and ethnic identity, as identified
566 by the child and the family members, an analysis of the services provided and an identification of
567 gaps in services available, the status or resolution of each request for assistance filed in the
568 previous year, and the numbers of children who are the subject of a request for assistance and

569 also charged with a delinquency matter in the previous year, The report shall exclude
570 information that identifies or allows others to identify any child who is the subject of a request
571 for assistance or his or her family.

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572 3. Conferences and referrals arranged under this section may extend for a period not to exceed 90
573 days from the date that the request for assistance was filed, unless the parent, child and petitioner
574 voluntarily agree in writing to a continuation of such conferences or referrals for an additional
575 period not to exceed 90 days from the expiration of the original period. Upon the expiration of
576 the initial 90 day period, or of such additional 90 day period, the request for assistance may be
577 dismissed and the child and his parents discharged from any further obligation to participate in
578 such conferences and referrals, or a fact finding hearing shall be held.

579 Section 39S Custody, Failure to Appear

582 If, after a hearing at which the child is represented by counsel, the court finds that a child alleged
583 to require assistance by reason of repeatedly failing to obey the lawful and reasonable commands
584 of his parent is likely not to appear at the fact finding hearing or at the disposition hearing, the
585 court may order the child to be released upon such terms and conditions as it determines to be
586 reasonable or may place the child in the temporary custody of the Department of Children and
587 Families.

588 An order placing a child with the department under this Section shall be valid for no more than
589 15 days without the child being brought again before the court for a hearing on whether the order
590 should be continued for another 15 day period. If the court decides to extend the order, it shall
591 note in writing the detailed reasons for its decision. An order under this section may be in effect
592 for no more than 45 days total.

593 A child who is the subject of a request for assistance may not be confined in shackles or similar
594 restraints or in a court lockup facility in connection with any proceedings pursuant to Sections
595 39K through 39X.

596 Section 39T Withdrawal of Request for Assistance

597 A petitioner may withdraw the request for assistance at any point prior to a hearing to determine
598 the disposition of a request for assistance.

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599 Section 39U Fact Finding Hearing

600 1. The court shall hold a fact finding hearing in which it shall receive evidence from the
601 petitioner, the parent, and the child,

Deleted: and the community-based services program case manager and the recommendation of the probation officer.

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3. The court shall either:

(i) dismiss the request for assistance because the circumstances which led to the filing of a request for assistance have been resolved, or the court finds that the child and family will not benefit from the assistance being offered;

(ii) adjourn the hearing for up to 60 days because it finds that the interests of the child would best be served by continued informal assistance, in which case the court shall, with the consent of the child and his parent, refer the child to a probation officer or refer the child and family to the designated program for additional community-based services assistance; or

(iii) find that the child and family require assistance and schedule a hearing for disposition

4. No statements made by a child, family member, or any other person during the period of inquiries, conferences, or referrals may be admitted at any hearing without the consent of the child.

Section 39V Disposition Hearing

1. At any hearing held to determine whether a child and family require assistance, the child and his attorney shall be present and the child and the parents or legal guardian shall be given an opportunity to be heard. The petitioner who files the request for assistance shall bear the burden of presenting evidence proving that the child and family require assistance. The court may enter

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Deleted: . At the fact finding hearing the court shall review any notice of termination of community-based services. The court shall consider any available documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided were sufficient. With the consent of the parent(s) and child the court may consider any written reports from service providers which would otherwise be subject to confidentiality or privilege. ¶ The court may order the child and the parent or other person legally responsible for the child to participate in community-based services regardless of whether or not the child and parents have previously used community based services on a voluntary basis. If the designated program thereafter determines that the case has been successfully resolved, it shall so notify the court, and the court shall dismiss the request for assistance.¶

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Deleted: or family member who made the statement, but may be received by the court at the hearing for disposition ...

Commented [MSOffice18]: We talked at our meeting about the need for rearranging what is in this section and moving some of it to the previous section.

Commented [MSOffice19]: In some places, the bill refers to a child **and** family requiring assistance; in other places it refers to a child **or** family requiring assistance.

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657 a finding that the child and family require assistance only if the request for assistance adequately
658 alleges that the child and family require assistance and those allegations have been proved
659 beyond a reasonable doubt at the fact finding hearing.

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660 2. Upon making a finding that a child and family require assistance, the probation officer who
661 conducted the preliminary inquiry, shall convene a meeting that includes the case manager, if

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662 any, from the community-based services program, the petitioner, a representative from the
663 child's school, the child's parent and his or her attorney, a representative of the department of
664 children and families, the child and his or her attorney, and any other person the who may be

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665 helpful in determining the assistance to be offered to the child and family. The probation officer

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666 shall submit a written report to the court to advise the court on appropriate treatment and services

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667 for the child and family and appropriate placement for the child and appropriate conditions and
668 limitations of such placement.

669 3. The court shall then conduct a dispositional hearing. The court, taking into consideration the
670 evidence admitted at that hearing, the report of the probation officer, and the physical and

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671 emotional welfare of the child, may make any of the following orders of disposition:

672 (a) subject to any conditions and limitations the court may prescribe, including provision
673 for supervision by a court clinic or by any public or private organization providing

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674 counseling or guidance and for any other services deemed appropriate by the court,

675 including but not limited to services described in section 39, permit the child to remain

Commented [MSOffice20]: I moved the list of services to a new Section 39_. If they are listed in clause (a), a court might consider them to be limited, for the purpose of clause (b) and what was clause (d), to services of the type available when a child is living at home. Clause (a), after all, applies only to such cases. Clause (b), however, applies to cases in which a child is placed with DCF. New Section 39_ covers both categories of cases.

676 with his parents;

690 (b) subject to such conditions and limitations as the court may prescribe, including, but
691 not limited to provision for services deemed appropriate by the court, including but not
692 limited to services described in section 39, place the child in the care of any of the
693 following:

694 (i) a relative, or other adult individual who, after inquiry by the probation officer
695 or other person or agency designated by the court, is found to be qualified to
696 receive and care for the child;

697 (ii) a private charitable or childcare agency or other private organization, licensed
698 or otherwise authorized by law to receive and provide care for such children; or

699 (iii) a private organization which, after inquiry by the probation officer or other person or
700 agency designated by the court, is found to be qualified to receive and care for the
701 child, (c) subject to subsection 4 and section 39, place the child in the custody of the
702 department of children and families. If the court chooses to place the child in the custody
703 of the department, then at the same time, the court shall consider the provisions of section
704 29C and shall make the written certification and determinations required by said section
705 29C.

706 4. When the court has placed a child in the custody of the department, the department
707 may not refuse out of home placement when requested by the child if there is a substantiated
708 history of abuse and neglect in the home by the parent or legal guardian;

709 SECTION 39 Court Oversight of Placements and Other Services

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Deleted: the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend...

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Deleted: <#>may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C...; ¶

: ¶

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Deleted: <#>subject to clauses (i) and (ii), shall direct the type and length of such out-of-home placement; ¶

Deleted: subject to clauses (i) and (ii), shall give due consideration to the recommendations of the court. Whenever the department decides not to carry out the recommendations of the court regarding placement and treatment of the child it shall present the reasons for its decision and the alternative plan for treatment and placement in writing to the court. ¶

732 Subject to Section 39V(4), at any stage of a request for assistance proceeding, the court may
733 issue an order directing the department, or any other state agency or school district joined as a
734 party to a request for assistance proceeding, to provide particular services to the family and child
735 including but not limited medical, psychological, psychiatric, educational, occupational and
736 social services if the provision of those services is in the best interest of the child.

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737 SECTION 39W Prohibition on placements with Department of Youth Services or in locked
738 facilities.

Deleted: to those services described in clause (a)

Deleted: If the agency is not able to comply with the order directing services then the agency shall provide to the court a written statement of the reasons why it is unable to provide those services. A copy of the statement shall be sent to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities.

739 1. Notwithstanding the provisions of (a) Section 39 , the court may not order the child to be
740 placed in the custody of or with the department of youth services.

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741 2. A child alleged or found to require assistance shall not be placed in a locked facility or any
742 facility designated or operated for juveniles who are alleged to be delinquent or who have been
743 adjudicated delinquent. However, such child may be placed in a facility which operates as a
744 group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated
745 delinquent are also provided care in such facility.

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746 Section 39W1/2 Duration of Assistance

747 1. Any order of disposition under Section 39V shall continue in force for not more than 90 days;
748 provided, however, that the court which entered the order may, after a hearing, extend its
749 duration for up to three additional periods, each such period not to exceed 90 days, if the court
750 finds that the purposes of the order have not been accomplished and that such extension would
751 be reasonably likely to further those purposes. The child shall have the opportunity to present
752 evidence and rebut evidence presented at any extension hearing.

Deleted: Orders shall be extended upon a finding that the child or family are not participating in good faith....

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770 2. No order shall continue in effect after the seventeenth birthday of a child named in a request
771 for assistance under section 39E(1)(a)(i), or after the sixteenth birthday of a child named in a
772 request for assistance under section 39E(1)(a)(ii).

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773 Section 39X. Custodial Protection

774 1. (a) A child may be taken into custodial protection for engaging in the behaviors described in
775 section 39N, only if such child has failed to obey a summons issued pursuant to section 390, or if
776 the law enforcement officer initiating limited custody has probable cause to believe that such
777 child has run away from the home of his parents or legal guardian and will not respond to a
778 summons.

779 (b) After an officer has taken a child into custodial protection, the officer shall immediately
780 notify the parent or other person legally responsible for the child's care, or the person with whom
781 he is domiciled, that he is under the custodial protection of the officer.

782 (c) After making every reasonable effort to give notice under paragraph (b), the officer shall:

783 (i) release the child to the custody of his or her parent or other person legally responsible
784 for his or her care upon the written promise, without surety, of the person to whose
785 custody the child is released that he will bring the child to the program designated to
786 provide community-based services for the geographic region which constitutes the
787 district of the juvenile court department within which the child was taken into custodial
788 protection or in which the child resides, at a time and place specified in writing; or

(ii) forthwith and with all reasonable speed take the child directly, and without first being taken to the police station house, to the program designated to provide community-based services for the geographic region which constitutes the district of the juvenile court department within which the child was taken into custodial protection or in which the child resides,; or

(iii) release the child to a representative of the department of children and families, if the law enforcement officer has reason to believe that the child is or has been in the care or custody of such department; or

(iv) take the child directly to the juvenile court in which the act occasioning the taking into custodial protection occurred, provided that the officer affirms on the record that he or she attempted to exercise the options identified in paragraphs (i), (ii), and (iii) of this subdivision, was unable to exercise these options, and the reasons therefore.

(d) In the absence of special circumstances, the officer shall release the child to his parents or other person legally responsible for his care in accord with paragraph (c)(i).

(e) A child may not be securely detained in a police station or town lockup. At no time shall a child be held in any locked facility.

(f) Notwithstanding the foregoing requirements for placement, any such child who has been taken into custodial protection shall, if necessary, be taken to a medical facility for treatment or observation.

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