

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:

Note: Highlighted sections include questions for Senator Spilka, or areas reflecting agency concerns or questions, but involving program areas over which those agencies do not have jurisdiction. All legal citations and references to current law will need to be verified. Red font indicates a question for Senator Spilka's Office

1 *Whereas* families in the Commonwealth whose children are truant, runaway and acting in a
2 fashion that interferes with their parent's ability to adequately care for and protect said children
3 are families and children requiring assistance of government agencies, including schools, human
4 service agencies and the courts, as well as non-governmental service providers; and;

5 *Whereas* the issues facing said children and families are complex and the services which
6 would best assist such families are not always available from a single agency or department of
7 the Commonwealth; and

8 *Whereas* the collaboration among multiple public and private agencies and offices is
9 required to ensure that all children and families receive the services they need to succeed; and

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

11 *Therefore*, it shall be the policy of the Commonwealth to develop a flexible, consistent,
12 and accountable system of community based programs to assist said children and families.

13 **SECTION 1.** The General Laws as appearing in the 2006 official edition are hereby
14 amended by adding after chapter 6A section 16G the following new section: [Senator's Office:
15 all legal citations need to be verified]

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

17 It is the intent of the General Court to create an accountable, community based system
18 that provides consistent services throughout the Commonwealth to address the needs of children
19 requiring assistance and their families by providing them with an array of resources. The goal of
20 said system is to preserve and strengthen families while ensuring the healthy behavioral, social
21 and educational development of the child and to provide opportunities to divert children from the
22 juvenile justice and child protection systems. These services shall focus on creating a stable
23 environment and strengthening the family as a whole while emphasizing parental responsibility.
24 These services shall also focus on assisting children who are at risk of dropping out of school.

25 Subject to appropriation said community based system shall consist of a network of
26 public and private providers that will provide service coordination, referrals and services in the
27 community as a response to children requiring assistance. The system shall include a mechanism
28 for the collection and analysis of information which will enable the Commonwealth to evaluate
29 the effectiveness of services. Nothing in this act is intended to abrogate the responsibility of
30 local education agencies to provide educational services as required by state and federal law.
31 There shall be no entitlement to community based services. The provision of all such services is
32 subject to appropriation and the availability of funds.

(1) For the purpose of this Section the following words shall have the following meanings:

”Child requiring assistance”, a child between the ages of 6 and 18 who (a) repeatedly runs away from the home of his parents, legal guardian, or custodian; (b) repeatedly fails to obey the lawful and reasonable commands of his parents, legal guardian, or custodian, thereby interfering with said parent’s, legal guardian’s, or custodian’s ability to adequately care for and protect said child; (c) repeatedly fails to obey the lawful and reasonable regulations of his school; or (d) who is legally required to attend school and is habitually truant;

“Community based services”, services, including coordination of services, that are designed to assist families with children requiring assistance so that, where appropriate, such children will be able to: (a) continue residing with their families in their home communities; (b) continue as students in their community schools; and (c) strengthen relationships with their families.

”Family with children requiring assistance”, the parents, guardians, custodian, siblings, and any other relatives or caretakers who are responsible for a child requiring assistance.

“Habitually truant”, a school-aged child not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school who fails to attend school for more than 8 school days in a quarter.

”Secretary” The Secretary of the Executive Office of Health and Human Services,

The Secretary shall:

(1). Subject to appropriation, including but not limited to sufficient funding to support the agency's administration of the activities described herein, the secretary or other agency if designated by the secretary, shall

(a) Within 12 months of the effective date of this act conduct data analysis with the cooperation from the Juvenile Court, Administrative Offices of the Trial Court and the Probation Department. The secretary shall gather data to understand the number of community service agencies required, the location, the staffing needs and other components necessary to establish a network of services.

(b) Establish a Families and Children Requiring Assistance Advisory Board. The Families and Children Requiring Assistance Advisory Board will review the EOHHS data analysis and the Juvenile Court, Administrative Offices of the Trial Court and the Probation Department data analysis and make a recommendation to the Secretary of whether there is sufficient information to design a model in 24 months.

(c) Within 24 months of the effective date of this act, design a model for the delivery of community based services for children requiring assistance which will augment, be compatible with and integrated with existing community based service systems for children. The secretary will also design a system to monitor the effectiveness of the services, and a system to gather data including demographic information, insurance status and benefit coverage of clients served, income documentation as needed to apply a sliding fee scale for payment or waiver of payment for services, and other information that may assist the program and the secretary in providing services, and evaluating the effectiveness of community based services. The

75 model shall allow a child or family to seek assistance from a community based services
76 agency directly and without referral. The model shall include procedures for referral to
77 other services whenever the staff of the agency offering community based services
78 determines that a family seeking or referred for services for a child has significant and
79 complex medical needs which cannot be met by the agency or where the child's behavior
80 presents a significant risk of harm that cannot be safely managed in the community.

81 (d) Subject to appropriation, within 36 months of the effective date of this act,
82 pilot the development of a community based service system for children requiring
83 assistance, provided further that, in the event the Secretary determines that there are
84 insufficient funds to continue the pilot in whole or in part, the pilot shall be terminated.
85 The secretary shall analyze the effectiveness of these pilot sites in order to make
86 necessary changes to the program design.

87 (e) Subject to appropriation, within 48 months of the effective date of this act,
88 establish a network of community based services for children requiring assistance and
89 their families throughout the Commonwealth, provided further that, in the event the
90 Secretary determines that there are insufficient funds to maintain the network, the
91 network may be terminated or the amount duration and scope of the community based
92 services the network provides may be reduced or eliminated.

93 (2) Any documentation of services provided to the family and child shall not be public records.
94 Except as otherwise required by law, including laws related to the reporting of suspected abuse
95 or neglect, statements made by the family and child while receiving services from the network of
96 community based services shall be treated as confidential and may not be used in school

disciplinary proceedings without the written consent of the person making the statement.

Information about the child and family requiring assistance, including interactions with service providers and protected health information services, may be shared among providers of community services providing such services to the child and family as well as with any EOHHS agency for which the child is eligible as needed to coordinate treatment and provide appropriate case management. Notwithstanding any provision to the contrary, in the absence of specific written directive from the child and or member of the family who is receiving service, information about the case, including interactions with service providers and protected health information services, may be shared among members of the case team as needed to coordinate treatment and provide appropriate case management, to the extent permitted under applicable federal law.

(3) Participation in community based services shall be pursuant to a voluntary agreement of the parent, legal guardian, or custodian and the child; provided however that provision of community based services shall be contingent upon parents/legal guardians and custodians (and child if of age) granting consent to allow covered services to be billed to the insurance providers.

Families or children may terminate their involvement at any time.

(4) Except as provided herein, a school administrator shall refer a child to community based services at the same time that the administrator notifies the student and his parent, legal guardian, or custodian that the student will be expelled for failure to comply with the lawful and reasonable rules of the school. After providing the process that is due the student, including an expulsion hearing if requested, the school administrator shall consider the outcome of the community based service center referral if the student provides that information to the school..

119 Provided that when a school administrator refers a child for habitually truant behavior, it must be
120 shown that the school, child, and family have completed a department of education certified
121 truancy program, if such a program is available at the school. Whenever a child or family seeks
122 assistance for habitually truant behavior, the program staff shall assist the family in gaining
123 access to the child's school's department of education certified truancy program.

124 **SECTION 2:** Chapter 69 of the General Laws is hereby amended by adding after section
125 10 the following new section:

126 Section 1P. The Department of Education shall promulgate regulations establishing a
127 truancy prevention program certification process. The regulations shall include requirements that
128 the truancy prevention program evaluate the level of out-of-school support for students and
129 families, and address the conditions that may make students more likely to become truant,
130 including previously unidentified special needs, bullying and harassment. School districts shall
131 establish a truancy prevention program which meets the requirements for certification by the
132 department.

133 **SECTION 3:** Section 21 of Chapter 119 of the General Law, as appearing in the 2008
134 Official Edition, is hereby amended by striking lines 8 to 16 and inserting in place thereof the
135 following:

136 "Child requiring assistance", a child between the ages of 6 and 18 who (a) repeatedly runs away
137 from the home of his parents, legal guardian, or custodian; (b) repeatedly fails to obey the lawful
138 and reasonable commands of his parents, legal guardian, or custodian, thereby interfering with
139 said parent's, legal guardian's, or custodian's ability to adequately care for and protect said child;

(c) repeatedly fails to obey the lawful and reasonable regulations of his school; or (d) who is legally required to attend school and is habitually truant;

SECTION 4: Section 21 of Chapter 119 of the General Law, as appearing in the 2008 Official Edition, is hereby amended by adding the following definitions:

“Family with children requiring assistance”, the parents, guardians, siblings and any other relatives or caretakers responsible for a school aged child who needs assistance.

“Habitual truant”, a school-aged child, not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school, who willfully fails to attend school for more than 8 school days in a quarter;

SECTION 5: Section 21 of Chapter 119 of the General Law, as appearing in the 2008 Official Edition, is hereby amended at line 54 by adding at the end thereof the following:

For purposes of sections 39K through 39Y exclusive the word “Parent”, includes a legal guardian or other person legally responsible for a child’s care.

SECTION 6 Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to 39J, inclusive, and adding the following new sections:

Section 39K. Jurisdiction

The Juvenile court department has original and exclusive jurisdiction over any proceeding commenced under section 39M alleging that a child requires assistance. The jurisdiction of the Boston juvenile court for the subject matter of this section shall extend to the territorial limits of Suffolk county.

Section 39L. Nature of the Proceedings

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

(2) Notwithstanding any general or special law to the contrary, no record pertaining to the child involved in the proceedings shall be maintained or remain active after the request for assistance is dismissed. The identity and record of any child for which a request for assistance is filed shall not be submitted to the criminal history systems board, criminal offender record information system, court activity record index [Senator's Office: We don't know what this is- please check with courts. Does this preclude using the MassCourts data system?] or any other criminal record information system

(3) Proceedings pursuant to sections 39K to 39Y, inclusive, shall be confidential and not be open to the public.

Section 39M Request for Assistance

(1) A proceeding to determine whether or not a child requires assistance is originated by the filing of a request for assistance, stating the petitioner's information and belief:

(a) that the child repeatedly runs away from the home of his parents or legal guardian or repeatedly fails to obey the lawful and reasonable commands of his parents thereby resulting in the parent's inability to adequately care for and protect the child, or that the child is habitually truant or repeatedly fails to obey the lawful and reasonable regulations of his school;

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

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

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

(i) if the request for assistance states that a child is habitually truant, a statement of the actions taken by the school district to comply with its obligations under its truancy prevention program certified pursuant to chapter 69, section 10 and to improve the school attendance of the child. The request for assistance shall also state whether or not the child and his family have participated in the truancy prevention program.; and

(ii) if the request for assistance states that a 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.

(e) when the petitioner is a parent, whether the family was informed of and referred to a community based services program under Section 16H of chapter 6A; and

(f) that the child and family require assistance.

(2) The following persons may originate a proceeding under this section:

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

(b) a parent;

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

(3) (a) When a request for assistance is presented to the clerk for filing by a parent or a police officer, the clerk shall determine whether or not the child and family named in the petition

206 have received services from a community based service program created under section 16H of
207 chapter 6A. If the child and family have participated in such services, the clerk shall record on
208 the petition the date of conclusion of community based services as provided for in chapter 6A,
209 section 16H. If the child and family have not participated in such services the clerk shall provide
210 to the petitioner the option of referring the child and family to the program designated by the
211 secretary of the executive office of health and human services to provide community based
212 services in the juvenile court district where the child resides.

213 (4) If the petitioner is a parent, the clerk shall offer to contact the community based
214 services provider on the parent's behalf in order to complete a referral to such services. If the
215 parent declines to be referred to such services, the clerk shall attach to the request for assistance
216 the parent's signed statement that the parent does not wish to be referred to such services and
217 that the parent understands the nature of services available through the court process, the manner
218 in which those services will be delivered, the nature of the orders which the court may issue and
219 the possibility of changes in custody of the child. The clerk may accept the request of assistance
220 for filing if said documents are attached.

221 (2) If the petitioner is a police officer, the clerk shall offer to contact community
222 based services provider [Senator's Office: Are there consent issues here?] in order to
223 complete a referral to such services. The clerk may accept a written statement of the
224 reasons for the officer's belief that the referral to community based services prior to filing
225 the request for assistance would present a risk of harm to the child. The clerk shall then
226 (i) immediately contact the designated community based services to provide notice that a
227 request for assistance has been prepared for filing, (ii) create a docket for the matter and
228 (iii) request that the chief probation officer, or his designee, conduct an immediate

inquiry and report to the clerk, or a judge if the clerk is not available with advice on how to proceed to obtain assistance for the child. After considering such advice the clerk may accept the request for assistance for filing.

Section 39N Notice

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

(2) In proceedings commenced by a parent, the court shall, at the time the request is filed, notify the parent in writing of the time and place that the request for assistance will be heard to ensure the parent has a copy of the request for assistance. The court is not required to issue a summons to either parent in such a case if the parents are living together. If the parents are not living together, the court shall cause a copy of the request for assistance and a summons to be issued, requiring the child and the parent, if known, who did 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 39O Determination of probable cause that a child requires assistance; expungement.

Whenever a request for assistance is filed, the clerk, or a judge if the clerk is not available, shall hold a hearing as soon as possible, but not later than 15 days after the creation of a docket. At that hearing the clerk, or a judge if the clerk is not available, shall receive the recommendation of the probation officer and receive evidence from the petitioner and the child. The clerk, or the judge shall determine i) whether or not there is probable cause for a determination that a child and family are in need of assistance and ii) whether it is in the best interest of the child for the matter to proceed to a fact finding hearing. The clerk or judge shall then either i) dismiss the request for assistance, or ii) refer the child and family to a probation officer for the preliminary inquiry under section 39R. When a request for assistance is dismissed under this section, the court shall enter an order directing the expungement of any records of the claimant maintained by the clerk, the court, the criminal history systems board, the court activity record index, and the probation department that directly pertain to the this request for assistance.

[Senator's Office: Are there MassCourts issues here- losses of data if family returns? DCF would like past history to inform service delivery]

Section 39P Scheduling the Fact Finding Hearing

At the conclusion of the probable cause hearing required by section 39O, the clerk shall set a date for a fact finding hearing no more than 90 days from the date the request for assistance was filed. If at any time prior to the fact finding 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. At the time the request for assistance is filed, that court shall ensure that 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 at the time the request for assistance is filed. The clerk shall cause a copy of the request for assistance and notice of the time and place of the fact finding hearing to be delivered to counsel at the time of appointment.

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

(3) The court shall determine whether the parent or legal guardian of a child alleged to require assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the court shall assess up to a \$1000 fee against the parent or legal guardian to pay for the cost of counsel appointed for the child. If the parent or legal guardian is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent or legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child.

Section 39R Preliminary Inquiry by Probation

(1) When requested by the court or a clerk the chief probation officer or his designee shall conduct a preliminary inquiry to determine whether in his opinion the best interests of the child and family require that crisis intervention services be provided to the child and family.

The probation officer in his discretion may:

(a) refer the family and child to a community based services program in the community where the child resides; the probation officer may confer with the provider of community based services to resolve the situation [Senator's Office: what does "resolve" mean- is parents consent needed?] 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 shall be confidential and may not be used in school disciplinary proceedings except as required by law;

(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, including but not limited to the insurance status and coverage and other information that may assist the commissioner of probation and the court in evaluating the availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

(b) The commissioner of probation shall establish a system to collect data regarding requests for assistance made and how they are resolved under sections 39K through 39Y. Said system shall maintain the privacy of clients served, assist the court in addressing the needs of the population to be served, collect information related to, among other things the racial and ethnic identity of the child, the insurance status and coverage of clients served, the length of time a child is receiving assistance from a probation officer, the identity of any public or private organization to whom a probation officer has referred a child or family for services; and other information that may assist the commissioner and the court in evaluating the availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

(c) The Commissioner of Probation shall report annually to the Child Advocate, the Families and Children Requiring Services advisory board, the house and senate committees on ways and means, joint committee on children, families and persons with disabilities and the joint committee on the judiciary on the assistance provided by probation officers to children and families under Sections 39K to 39Y. The report shall be filed on October 1 of each year and shall include for each juvenile court district: the number of children receiving assistance, their racial and ethnic identity, as identified by the child and family members, an analysis of the services provided and an identification of gaps in services available, the status or resolution of each request for assistance filed in the previous year, and the numbers of children who are the subject of a request for assistance and also charged with a delinquency matter in the previous

year. The report shall exclude information that identifies or allows others to identify any child or family who is the subject of a request for assistance.

Section 39S Custody, Failure to Appear

If, after a hearing at which the child and his parent is represented by counsel, the court finds that a child alleged to require assistance by reason of repeatedly failing to obey the lawful and reasonable commands of his parent is likely not to appear at the fact finding hearing or at the disposition hearing, the court may order the child to be released upon such terms and conditions as it determines to be reasonable or may place the child in the temporary custody of the department of children and families. Prior to the court granting temporary custody to the department of children and families, the court must make a written certification and determination that it is contrary to the welfare of the child to be in his home, and that the department of children and families has made reasonable efforts to prevent removal of the child from his home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of the preventative services as an alternative removal.

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

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

Section 39T Withdrawal of Request for Assistance

364 The petitioner may, withdraw the request for assistance at any time prior to a hearing to
365 determine the disposition of a request for assistance. A probation officer may at any time
366 recommend to the court that the request for assistance be dismissed upon a showing that
367 dismissal is in the best interests of the child.

368 Section 39U Fact Finding Hearing

369 (1) The court shall hold a fact finding hearing in which it shall receive evidence from the
370 petitioner, the parent, the child, a representative from the community based services program, if
371 involved with the family, and the probation officer. At any hearing held to determine whether a
372 child requires assistance, the child and his attorney shall be present and the parents or legal
373 guardian shall be given an opportunity to be heard. The petitioner who files the request for
374 assistance shall bear the burden of presenting evidence proving that the child requires assistance.

375 Senator's Office: – court system may have comments on this....especially sections c

376 (2) Following a fact finding hearing the court shall either:

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

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

384 (c) If the court finds the allegations in the request for assistance have been proved at the
385 fact finding hearing beyond a reasonable doubt, it may find that the child named in such

request for assistance to be a child requiring assistance and schedule a hearing for disposition

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

Section 39V Disposition Conference and Hearing

(1) Upon making a finding that a child require assistances after a fact finding hearing , the court shall convene a conference of the probation officer who conducted the preliminary inquiry, a representative from the community based services agency, if involved with the family, the petitioner, a representative from the child's school, the child's parent and his attorney, the child and his attorney, a representative of the department of children and families, if involved with the family, and any other person who may be helpful in determining the assistance to be offered to the child and family. The probation officer shall present written recommendations and other persons at the conference may present written recommendations to the court to advise the court on appropriate treatment and services for the child and family, appropriate placement for the child, and appropriate conditions and limitations of such placement.

At the conference and subsequent hearing on disposition, the child and his attorney shall be present and the parents or legal guardian and the petitioner shall be given an opportunity to be heard. The court may receive evidence as to the best disposition from all persons who participate in the conference and any other person who may be helpful in determining an appropriate disposition.

(2) The court shall then conduct a dispositional hearing. The court, taking into consideration the evidence admitted at the hearing, the report of the probation officer, and the

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

(a) subject to any conditions and limitations the court may prescribe, including provision for medical, psychological, psychiatric, educational, occupational and social services, and for supervision by a court clinic or by any public or private organization providing counseling or guidance and for any other services deemed appropriate by the court, permit the child to remain with his parents;

(b) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for services deemed appropriate by the court, including but not limited to services described in clause (a), place the child in the care of any of the following:

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

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

(c) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, place the child in the custody of the department of children and families. If the court chooses to place the child in the custody of the department then at the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C

When the court has placed a child in the custody of the department, then the department:

- 431 (i) may not refuse out of home placement when requested by the child if there
432 is a substantiated history of abuse or neglect in the home by the parent
433 or legal guardian;
- 434 (ii) shall direct the type and length of such out-of-home placement;
- 435 (iii) subject to clauses (i) and (ii), shall give due consideration to any out of
436 home placement the recommendations of the court. Whenever the
437 department decides not to carry out the recommendations of the court
438 regarding placement and treatment of the child it shall present the
439 reasons for its decision and the alternative plan for treatment and
440 placement in writing to the court.

441 (d) Section 39W Prohibition on placements with the department of youth services or in
442 locked facilities

443 (1) Notwithstanding the provisions of subsection 2 (d) the court may not order the child
444 to be placed in the custody of the department of youth services.

445 (2) A child found to require assistance shall not be placed in a locked facility or any
446 facility designated or operated for juveniles who are alleged to be delinquent or who have been
447 adjudicated delinquent. However, such child may be placed in a facility which operates as a
448 group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated
449 delinquent are also provided care in such facility.

450 Section 39X Duration of Assistance

451 (1) Any order of disposition under Section 39V shall continue in force for not more than
452 120 days; provided, however, that the court which entered the order may, after a hearing, extend
453 its duration for up to three additional periods, each such period not to exceed 90 days, if the court

finds that the purposes of the order have not been accomplished and that such extension would be reasonably likely to further those purposes. The child shall have the opportunity to present evidence and rebut evidence presented at any extension hearing.

(2) No order shall continue in effect after the eighteenth birthday of a child named in a request for assistance.

Section 39Y. Custodial Protection [Senator's Office: renaming this so it's not an arrest- courts need to weigh in- there are due process issues for consideration]

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

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

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

(i) release the child to the custody of his or her parent or other person legally responsible for his or her care upon the written promise, without surety, of the person to whose custody the child is released that he will bring the child to the court on the next court date.

SECTION 7. The department of elementary and secondary education (DESE needs to weight in- especially with their new legislation for underperforming schools- do they want to pursue this specific model etc.) shall pilot a truancy prevention program using a restorative

justice format in at least one urban high school in the Commonwealth. The program shall include the use of healing circles which allow family, neighborhood and school community members to be present; a reparative board, comprised of peers and led by an adult; family group counseling, and mediation or alternative dispute resolution with the child, family members and school representatives. The program shall be designed to address the underlying causes both in and out of school which led to truancy. The department shall evaluate the effectiveness of the program in preventing truancy and enhancing the child's academic performance and report the results of that evaluation to the board of elementary and secondary education, the house and senate committees on ways and means, joint committee on education and the department of elementary and secondary education.

SECTION 8. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 3 of the first paragraph, the word "sixteen" and inserting in place thereof the following word:- eighteen. [Senator's Office: Is this appropriate to change here? The Board of Elementary and Secondary Education has the authority to set the minimum and maximum age for school attendance.]

SECTION 9. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 4 of the second paragraph, the word "sixteen" and inserting in place thereof the following word:- eighteen [Senator's Office: Is this appropriate to change here? The Board of Elementary and Secondary Education has the authority to set the minimum and maximum age for school attendance.]

SECTION 10 Probation Data collection

Within 12 months of the effective date of this act, the Commissioner of Probation shall submit a report to the Child Advocate, the Families and Children Engaged in Services advisory board, the

house and senate committees on ways and means, joint committee on children, families and persons with disabilities and the joint committee on the judiciary. The report shall include for each juvenile court district: the number of children and families receiving assistance from probation officers; the racial and ethnic identity of the children and families, as identified by the child and family members; an analysis of the services provided and an identification of gaps in services available; the status or resolution of each Child in Need of Services petition filed, and the numbers of children who are the subject of a Child in Need of Services petition and also charged with a delinquency matter in the previous year; and the custody status of the child that is subject to the Child in Need of Services petition, specifying if the child is committed to the custody of department of children and families or the department of youth services. The report shall exclude information that identifies or allows others to identify any child or family involved in the juvenile justice system.

SECTION 11. (a) There shall be a Families and Children Requiring Assistance Advisory Board. The board shall consist of the following members:

4 representatives appointed by the secretary of the executive office of health and human services, one of whom shall be a representative of the department of children and families and one of whom shall be a representative of the department of youth services, one of whom shall be a representative of the department of mental health, the Child Advocate, or her designee, the director of the office of Medicaid or his designee, a representative of the department of elementary and secondary education, appointed by the commissioner, a juvenile court judge appointed by the chief justice of the juvenile court, a probation officer assigned to a juvenile court, appointed by the commissioner of probation, a district attorney, a designee of the committee for public counsel services, an education advocate, one member appointed by the

523 Governor who is a parent and is not be an employee of the commonwealth, two members
524 representing the legislature, one appointed by the Speaker of the House and one appointed by the
525 President of the Senate.

526 The secretary of health and human services and the chief justice of the juvenile court shall
527 designate two board members to serve as chairs. All appointments to the board shall be made not
528 later than thirty days after the effective date of this section. Any vacancy shall be filled by the
529 appointing authority. The chairpersons of the board shall schedule the first meeting of the board,
530 which shall be held not later than sixty days after the effective date of this section.

531 (c) Families and Children Requiring Assistance Advisory Board shall (1) monitor the progress
532 being made by the executive office of health and human services in developing a community
533 based services network under section 16H of chapter 6A, (2) monitor the progress being made
534 by the probation department in developing a system to collect data regarding requests for
535 assistance made and how they are resolved as required by section 39R of chapter 119, (3)
536 monitor the effectiveness of the juvenile court in providing assistance to children and families
537 who file or are the subjects of requests for assistance under sections 39K through 39Y of chapter
538 119, (4) provide advice with respect to such implementation upon the request of the chief justice
539 of the juvenile court, the commissioner of probation, the secretary of health and human services
540 or the general court and make recommendations to the secretary annually whether there are
541 sufficient resources and support to continue with the activities identified in the bill.

542 (d) Within 12 months of the effective date of this act, The Families and Children Requiring
543 Assistance Board will require periodic data reports from EOHHS and the Court and review final

data results and make recommendations to the secretary for funding and implementation of this act.

(e) Within 24 months The Families and Children Requiring Assistance Advisory Board will review the model design and make recommendations to the secretary for pilot programs including recommendations of whether there is sufficient information, workforce and funding available to prepare and implement a pilot program in 36 months.

(f) Within 36 months, The Families and Children Requiring Assistance Advisory Board will review the pilot results programs make a recommendation to the secretary of whether there is sufficient information, workforce and funding available to expand the pilot to other sites.

(g) Families and Children Requiring Assistance Advisory Board shall annually, not later than January 30th of each year, report in writing to the Governor and the house and senate committees on ways and means, the joint committees on children and families and the judiciary on the progress made on the implementation of section 16H of chapter 6A and sections 39K through 39X of chapter 119. In each annual report the advisory board shall report its expectation with respect to the likelihood that further progress toward the goals of the enabling legislation will be achieved in the coming year. The annual report shall also contain a recommended budget for the continued implementation activities to be undertaken in the following year. The board will make a final report on the implementation of section 16H of chapter 6A and sections 39K through 39Y of chapter 119 together with any recommendations for legislative and regulatory changes not later than one year after the network is fully operational. The report shall be public. The board shall terminate following submission of the final report.

566 **SECTION 12.** Section 2(a)-(b) of chapter 16H as inserted by SECTION 1 of this act, shall take
567 effect on July 1, 2011

568 **SECTIONS 13.** SECTION 7 and 10 shall take effect on within 12 months of the effective date
569 of this act.

570 **SECTION 14.** SECTIONS 3 through 6, SECTIONS 8 and 9 shall take effect take effect no
571 sooner than 48 months after the effective date of the act, conditional upon the Secretary's written
572 notice to the legislature that, subject to appropriation in any given year, the executive office has
573 developed the capacity for a community based services network in accordance with the
574 provisions of Section I of this Act. [Senator's Office: - the system must be funded and fully
575 operational before the current CHINS legislation is amended].

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