

## **SECTION XXXX**

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

Section 39K.

### ***Definitions***

“Child in need of services”, a child below the age of eighteen who persistently runs away from the home of his parents or legal guardian, or persistently refuses to obey the lawful and reasonable commands of his parents or legal guardian, thereby resulting in said parent’s or guardian’s inability to adequately care for and protect said child, or persistently violates the lawful and reasonable regulations of his school, or a child between the ages of six and sixteen who is a habitual truant.

“Habitual truant” a child who persistently and willfully fails to attend school for more than 8 school days in a quarter.

### ***Jurisdiction and venue***

Section 39L

1. The Juvenile court department has original and exclusive jurisdiction over any proceeding involving a child alleged to be in need of services.
2. On its own motion and at any time during proceedings brought under sections 39K through 39\_\_, the court may substitute a care and protection petition pursuant to section \_\_\_\_ for a petition to determine whether a child is in need of services.
3. Proceedings involving a child alleged to be in need of services shall originate in the juvenile court district in which the child resides. On motion made on behalf of the child, or by his parent or other person legally responsible for his care, or on the court’s motion, and for good cause shown, the court may transfer the proceedings to another district

### ***CORI exemptions***

Section 39M

1. Proceedings pursuant to sections 39K to 39\_, inclusive, shall not be deemed criminal proceedings and any record of these proceedings, including the filing of a petition and creation of a docket, shall not be entered in the Criminal Offender Record Information System.

2. Notwithstanding the assignment of a probation officer to assist a child who is involved in proceedings conducted pursuant to sections 39K through 39\_, the matter shall not be deemed a 'probation case' for purposes of reporting records to the criminal offender record information system pursuant to general laws chapter 6 section 168A.

### ***Petition***

Section 39N.

1 A proceeding to adjudicate a child to be in need of services is originated by the filing of a petition, alleging:

(a) That the child persistently runs away from the home of his parents or legal guardian, or persistently refuses to obey the lawful and reasonable commands of his parents or legal guardian, thereby resulting in said parent's or guardian's inability to adequately care for and protect said child, or

(b) that the child is habitually truant or persistently violates the lawful and reasonable regulations of his school

(c) that the child was under the age of 18 at the time the specified acts took place, or under the age of 16 if habitual truancy is alleged.

(d) specifying the acts on which the allegations are based and the time and place they allegedly occurred.

(e) when the petitioner is a school district, the petition shall also a statement of the reasonable steps taken by the responsible school district to improve the school attendance and conduct of the child. The petition shall also state whether or not the child and his family have participated in truancy prevention program certified by the department of education pursuant to chapter 69, section 1O;

(f) the child requires supervision or services.

### ***Standing -Persons who may originate proceedings.***

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

(a) a police officer;

(b)the parent, legal guardian or other person legally responsible for the child's care;

(c) the department of social services

(d) the organization, authorized by the secretary of the executive office of health and human services pursuant to chapter 61 section 16H, which has provided CCIS to the

family and child in response to the circumstances which arose from acts specified in the petition.

### ***Acceptance of the petition by the clerk of court***

3 The petitioner shall attach to the petition the notice of termination of CCIS as provided for in chapter 6A, section 16H(11)(b) or notice of ineligibility as provided for in chapter 6A, section 16H (7)(e). Except as provided below, clerk shall not accept for filing any petition that does not have attached thereto said notice of termination or ineligibility.

Any person or agency seeking to file a petition pursuant to this section which does not have attached thereto the notice of termination of CCIS 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 CCIS in the juvenile court region 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 referral to CCIS prior to filing the petition would present a risk of harm to the child or others in lieu of the notice of termination or ineligibility. The clerk shall then immediately contact the designated CCIS to provide notice that a petition has been filed.

### ***Summons***

#### **Section 39M**

1. On the filing of a petition pursuant to this section, the court may cause a copy of the petition and a summons to be issued, requiring the child and his parent or other person legally responsible for his care, or with whom he is domiciled, to appear at the court at a time and place named to answer the petition.

### ***Notice to non-petitioning parent***

(2) In proceedings originated by a parent, legal guardian or other person legally responsible for the child's care the court shall cause a copy of the petition and notice of the time and place to be heard to be served upon any parent of the child or other person legally responsible for the child's care who has not signed the petition, provided that the address of such parent or other person legally responsible is known to the court or is ascertainable by the court. Such petition shall include a notice that, upon placement of the child in the care and custody of the department of social services or any other agency, said parent may be named as a respondent in any child support proceeding brought in connection with the child's care.

3. 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..

### ***Fact Finding Hearing***

#### **Section 39O**

The clerk shall set a date for a fact finding hearing no more than 90 days from the date the petition 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.

### ***Appointment of counsel***

#### **Section 39P**

The clerk shall appoint counsel for the child 3 business days prior to any scheduled hearing. The clerk shall cause a copy of the petition and notice of the time and place to be heard to be delivered to counsel at the time of appointment.

If a hearing is to be held on an emergency basis, the clerk shall appoint counsel for the child immediately upon scheduling said hearing.

The court shall determine whether the parent or guardian of a child alleged to be in need of services is indigent. If the court determines that the parent or guardian is not indigent, the court shall assess a \$300 fee against the parent or guardian to pay for the cost of appointed counsel. If the parent 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 to pay a reasonable amount toward the cost of appointed counsel.

### ***Assignment of a PO, duties, powers***

#### **Section 39Q**

1. The clerk shall request the chief probation officer or his designee to conduct a preliminary inquiry to determine whether in his opinion the best interests of the child 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 the program designated to provide CCIS for this juvenile court district; the probation officer may confer with the provider of CCIS to resolve the situation which formed the basis of the petition;

(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 petition;

(d) If the child or his parents fail to participate in good faith in the referrals or conferences arranged by the probation officer the probation officer shall so certify in writing and present these findings to the court.

### ***Data Collection***

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

(b) The Commissioner of Probation shall establish a data collection system for use by probation officers assisting children pursuant to sections 39K through 39\_\_ which maintains the privacy of clients served, assists the court in addressing the needs of the population to be served, collects information related to, among other things the insurance status and coverage of clients served, and other information that may assist the commissioner and the court in evaluating the effectiveness of services to children who are the subject of petitions pursuant to this section.

### ***Duration of probation assistance***

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

### ***Emergency hearing and temporary limited custody***

#### **Section 39R**

1. If at any time the court determines by probable cause that there is a likelihood of serious harm to the child, the court may order the child into the emergency limited custody of the Department of Social Services.

A hearing shall be scheduled within 72 hours of any such commitment, and counsel shall be appointed for the parents or guardian of said child.

If it is shown by clear and convincing evidence that there is a likelihood of serious harm to the child, the child may be placed in the temporary limited custody of the Department of Social Services pending a hearing.

2. If the court finds probable cause that a child alleged to be in need of services by reasons of persistently refusing to obey the lawful and reasonable commands of his parents or legal guardian is likely not to appear at the fact finding hearing or at the hearing on adjudication, the court may conduct an emergency hearing to determine if the child should be placed in the temporary limited custody of the Department of Social Services.

Counsel shall be appointed for the parents or guardian of said child. If the court finds by clear and convincing evidence that the child is likely not to appear, the court may place the child in the temporary limited custody of the Department of Social Services pending adjudication and disposition.

### ***Petitioner may stop the process***

#### Section 39S

Petitioner shall retain the right to withdraw the request for a petition at any point prior to a hearing to adjudicate a child in need of services.

### ***Fact finding hearing***

#### Section 39T

1. The court shall hold a fact finding hearing in which it shall receive evidence from the petitioner and the CCIS program case manager and the recommendation of the probation officer.

2. At the initial appearance of the child, the court shall review any notice of termination of CCIS. With the consent of the family and child the court shall consider any written reports created by the CCIS indicating any previous actions it has taken with respect to the case. The court shall consider any available documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided are sufficient.

The court may order the child and the parent or other person legally responsible for the child to participate in CCIS (***Is this possible in MA, what are the sanctions for refusal? In NY it is contempt.***). 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 petition.

3. The court shall either

(i) dismiss the petition because there is no probable cause to believe that the child is in need of services;

(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 parents or guardian, refer the child to a probation officer or order the child and family to return to the designated program for additional CCIS assistance; or

(iii) find probable cause and schedule a hearing for adjudication

### ***Evidence***

4. No statements made by a child or by any other person during the period of inquiries, conferences, or referrals may be used against the child at the fact finding hearing or hearing for adjudication but such statements may be received by the court after adjudication for the purpose of disposition

### **Hearing on adjudication; determination of child in need of services**

#### Section 39U.

1. At any hearing held to determine whether a child is in need of services, said child and his attorney shall be present. The petitioner shall bear the burden of presenting evidence proving that the child is in need of services. If the court finds the allegations in the petition have been proved at the trial by a preponderance of the evidence, it may adjudge the child named in such petition to be in need of services.

2. Upon adjudicating a child in need of services the court shall convene a meeting of the probation officer who conducted the preliminary inquiry, a case manager from the CCIS program, the petitioner, the child's school, and parent or guardian. The persons at the meeting shall present written findings to the court to advise the court on appropriate placement for the child and appropriate conditions and limitations of such placement. The court, taking into consideration those findings 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 services, 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 those 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;

(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; or

(iii) a private organization which, 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.

(c) subject to the provisions of sections 32 and 33 (***32 and 33 set DSS's obligations in placing kids out of the home***) and with such conditions and limitations as the court may recommend (***in a and b above the court 'prescribes' but it cannot require DSS to do anything***), commit the child to the department of social services. If the court chooses to commit the child to 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. (***29C is a process of written judicial certification that the child's best interest require removal***) The department 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. The department shall direct the type and length of such out-of-home placement.

The department shall give due consideration to the recommendations of the court. The department shall give due consideration (***I think we should require that they honor these requests***) to the requests of the child that the child be placed outside the home of a parent or guardian where there is a history of abuse and neglect in the home by the parent or guardian.

### ***Due Process where child is committed to DSS for out of home placement***

3. Prior to committing the child to the department with a recommendation that the child be placed outside his home, the court shall hold a hearing to determine by clear and convincing evidence if there is a substantial likelihood of serious harm if the child is allowed to remain at home. The court shall appoint counsel for the parents or guardian at said hearing

4. A child found to be in need of services shall not be committed to any county training school. A child found to be in need of services shall not be committed to an institution designated or operated for juveniles adjudicated delinquent. However, such child may be committed to a facility which operates as a group home to provide therapeutic care for



juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility and may, in addition, be referred to the department of youth services for placement in individual foster care.

### ***Duration of disposition order after adjudication***

#### **Section 39V**

1. Any order of disposition pursuant to this section shall continue in force for not more than 90 days; provided, however, that the court which entered the order may, after a hearing, extend 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. Orders shall be extended upon a finding that the child or family are not participating in good faith.

2. No order shall continue in effect after the eighteenth birthday of a child named in a petition or after the sixteenth birthday of a child named in a petition if the petition alleges that the child is habitual truant.

### ***When a child is taken by the police***

#### **Section 39W.**

1. (a) A child may be taken into limited custody for committing the behaviors described in the definition of child in need of services in section twenty-one, only if such child has failed to obey a summons issued pursuant to section -----, 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 guardian and will not respond to a summons.

(b) After an officer has taken a child into limited custody, 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 has been taken into custody.

(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 security, of the person to whose custody the child is released that he will produce the child before the program designated to provide CCIS for the geographic region which constitutes the division of the juvenile court department within whose district the child was taken into limited custody or 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 CCIS for the geographic region which constitutes the division of the juvenile court department within whose district the child was taken into limited custody or resides, unless the

officer determines that it is necessary to question the child, in which case he or she may take the child to a facility designated by the chief administrator of the juvenile court as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there question him or her for a reasonable period of time; or

(iii) release the child to a representative of the department of social services, if the law enforcement officer has reason to believe that the child is or has been in the care or custody of such department.

(iv) take a child in need of crisis intervention or respite services to an approved runaway program or other approved respite or crisis program; or

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

(d) In the absence of special circumstances, the officer shall release the child in accord with paragraph (c) (i).

(e) In determining what is a "reasonable period of time" for questioning a child, the child's age and the presence or absence of his parents or other person legally responsible for his care shall be included among the relevant considerations

(f) A child may not be securely detained in a police station or town lockup. At no time will a child be placed in any locked facility under the supervision of any police department, sheriff department, Department of Youth Services.

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