

DRAFT
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CHAPTER 119. PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM

PROTECTION OF CHILDREN

Chapter 119: Section 39E. Petitions seeking determination that child is in need of services; jurisdiction; standing

Section 39E. The divisions of the juvenile court department may receive and hear petitions seeking a determination that a child is in need of services as defined in section twenty-one, in accordance with the provisions of this section and of sections thirty-nine F to thirty-nine I, inclusive. Proceedings pursuant to sections thirty-nine E to thirty-nine I, inclusive, shall not be deemed criminal proceedings and *these proceedings shall not be entered in the Criminal Offender Record Information system or Criminal (court?) Action (activity?) Record information system.*

A parent or legal guardian of a child *between the ages of 6 and 16*, having custody of such child, or a police officer may apply for a petition in one of said courts alleging that said child persistently runs away from the home of said parent or guardian or persistently refuses to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child *and creates a likelihood of serious harm.*

The clerk shall set a date for a preliminary hearing to determine whether a petition should issue and appoint counsel for the child at this time. The clerk shall also notify the child, parents and child's attorney of such hearing by summons. Unless service of the summons required by this section is waived in writing, such summons shall be served by the 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.

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 a petition be issued. The court shall hold a *preliminary* hearing in which it shall *receive evidence from the petitioner* and the recommendation of the probation officer and *community case manager* and shall either (i) decline to issue the petition because there is no probable cause to believe that the child is in need of services; (ii) decline to issue the petition because it finds that the interests of the child would best be served by *continued* informal assistance without a trial on the merits, 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 *community case manager* for assistance; or (iii) *find probable cause*, issue the petition and schedule a trial on the merits.

Probable cause may be found only upon a showing by a community case manager that the family and/or child have failed to participate in good faith with any services offered. Community case managers shall present to the court written findings regarding the participation of the family and/or child. 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 preliminary hearing or trial on the merits but such statements may be received by the court after adjudication for the purpose of disposition

If the child is brought in on arrest, the court shall immediately request the probation officer promptly to make like inquiry and thereafter conduct a preliminary hearing to determine if probable cause exists for the petition to issue.

Whenever a child is referred to a probation officer for assistance, such officer shall have the authority to refer the child to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services and shall have the authority to 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 application or petition and which will eliminate the need for a judicial trial on the merits. During the pendency of such referrals or conferences, neither the child nor his parents may be compelled to appear at any conferences, produce any papers, or visit any place. However, if the child or his parents fail to participate in good faith in the referrals or conferences arranged by the probation officer or community case manager, the community case manager shall so certify in writing and present these findings to the court. Conferences and referrals arranged under this section may extend for a period not to exceed three months from the date that the application was initially made for the petition, 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 three months from the expiration of the original period. Upon the expiration of the initial three month period, or of such additional three month period, the petition shall be dismissed and the child and his parents discharged from any further obligation to participate in such conferences and referrals, or a petition shall issue and a date set for a trial on the merits.

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 limited custody of the Department of Social Services pending a trial on the merits.

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

Chapter 119: Section 39F. Right to counsel; determination of indigency; assessment of costs

Section 39F. *When the application is filed, the court shall appoint counsel for the child.* 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.

Chapter 119: Section 39G. Hearing; determination of child in need of services

Section 39G. At any *trial* 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. Upon making such adjudication the court, taking into consideration 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:

(1) 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; (2) 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 (3) 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) 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. Upon such a finding, the court may commit the child to the temporary custody of the department of social services. The department shall give due consideration to the recommendations of the court. 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 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.

(d) Upon adjudicating a child in need of services the court shall convene a meeting of probation, community case manager, petitioner, local educational agency, and parent and/or guardian. Such team shall present written findings to the court to determine the conditions and/or placement.

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.

Any order of disposition pursuant to this section shall continue in force for not more than *three* months; provided, however, that the court which entered the order may, after a hearing, extend its duration for additional periods, each such period not to exceed *three* months 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 and/or family are not participating in good faith.

No order shall continue in effect after the eighteenth birthday of a child named in a petition authorized to be filed by a parent or a legal guardian having custody, or a police officer, under the provisions of the second paragraph of section thirty-nine E, or after the sixteenth birthday of a child named in a petition authorized to be filed by a supervisor of attendance under the provisions of the third paragraph of said section thirty-nine E.

Chapter 119: Section 39H. Arrest of child; notification and placement; bail; detention; right of appeal

Section 39H. A child may be arrested for committing the behavior 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 thirty-nine E, or if the arresting law enforcement officer 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.

Whenever such child is arrested and the court with jurisdiction over the case is not in session, the law enforcement officer in charge of the police station or town lockup to which the child has been taken, or his designee, shall immediately notify (1) the probation officer of the division of the juvenile court department within whose district such child was arrested or

resides, or such other probation officer who may have knowledge of the child and (2) 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, and shall inquire into the case.

The law enforcement officer, in consultation with the probation officer, shall then immediately make all reasonable diversion efforts so that such child is delivered to the following types of placements, and in the following order of preference:

(i) to one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of social services or the child's foster home;

(ii) to a temporary shelter facility licensed or approved by the office for children, a shelter home approved by a temporary shelter facility licensed or approved by said office for children, or a family foster care home approved by a placement agency licensed or approved by said office for children; provided, however, that such a placement is available and, in the view of the probation officer, appropriate for the child; provided, further, that such a placement furnish said law enforcement officer with a written statement that it will make reasonable efforts to secure the child's appearance at the next available court session and that such placement will furnish the necessary transportation to such placement and to the court, unless the law enforcement officer chooses to furnish said transportation, provided, further, that such 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..*

Notwithstanding the foregoing requirements for placement, any such child who is arrested shall, if necessary, be taken to a medical facility for treatment or observation.

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 preliminary hearing or at the trial on the merits, the court may conduct a hearing to place the child 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 a trial on the merits.