

Executive Steering Committee
DRAFT – Outline of Legislation
For December 12, 2006 Meeting

I. Community Based Program

- Grant program in EOHHS – define minimum RFP
Voluntary, family centered
Accountable for case outcomes
Staffing criteria and credentialing.
- Use lead agency model
Public or private, state or local agencies as participants, or partners
Specify required partner agencies, e.g. DMH, DSS, Probation, each school system, police. Create small group/task force for each community
- Lead agencies to have advisory boards
- Accountability: some sort of periodic reports to EOHHS, Legislature.
(How will this influence governance?)
- Location and service area should mirror existing regional structures
(Probably DSS – they match with DMH)

Policy Oversight

Formal mechanism for collaboration at state level among agencies, probation and courts
Advisory board at the state level

Population to be served – Review existing offenses for possible redefinition.

Same population that is subject to the court process for these behaviors
age 6-16 – truant or habitual offender of school rules
age 6-18 runaway and refusal to obey lawful rules
(Hold a separate meeting on this)

Who may refer to the front end?

- Parent(s) or legal guardian(s)
- Child (self referral)
- Police
- School, After a phase in period while programs get going, school it must show that they have first completed a DOE certified truancy program.
- Pediatricians, emergency rooms

Exclusions

- Significant family violence – triggers mandated report.
- Significant child protection concerns. – triggers mandated report.
- Safety Issues i.e. prostituting while a run away
- Complexity of need i.e. taxing services offered

Minor delinquency is not a reason for exclusion.

(This is determined by case review involving program administrators, probation, and defense counsel)

DSS out of home placement is not automatic exclusion

Excluded families receive written explanation of what other resources are available to them. Some follow-up contact will be made.

First Contact with Family

- Goals:
 - To avoid filing a petition
 - To prevent separation of child from family
- Rapid initial response to referral or walk-in – open 24/7
(Should we establish time limit for first actions; e.g. confer within 2 hours, act to stabilize within 6 hours, assessment within 3 days?)
- Intake done with universal tool provided by EOHHS.
- Data collection for all who come through the door
- Everyone through the door is triaged and assigned a case manager
- Information provided about resources/services available in the community.
- Crisis intervention placement – 72 hours only
*(If child objects? Go home or stay here? Is this a safety detention?
If parent objects?
Should there be a hearing mechanism at the front end? – in NY a ‘shelter hearing’ takes place at the lead agency location)*

After the initial crisis is over

- Case screening to identify family strengths and resource/service needs (e.g. mental health, substance abuse, basic family needs, child care, insurance, legal issues, education placement, child protection)
- Voluntary respite – days
(Is parent/child agreement required?)
- Create a service plan, refer to services, assist with insurance issues, follow-up on use of services
(What other actions are allowed? –temporary shelter, medical care, safety detention, others?)

Minimum level of services available

Should the statute establish some minimum level of service? Do we have an entitlement after Rosie D.?

*Should the statute address the private insurance / mental health issue?
How?*

Duration of Services

- 3 months with possible extension of another 3 months.
(How is that decision made?)
Does the front end caseworker continue in any capacity after this period is over?)
- Participation in Front End services is voluntary; families may terminate their involvement at any time. *(What happens if parents want to terminate and child does not?)*

Disposition:

- Refer to Court to file a petition or for 2d tier informal assistance
- Closed, no CHINS finding.
(How is success defined?)
- Discharged, No more benefit likely to child, CHINS possible
- Discharged, Failure to cooperate by parent or child, CHINS possible

Documentation of all contact with and services provided to family by lead agency

- Eventually it may be filed in court if
- Report should contain findings of fact – if successful then no filing in court on same facts
- Confidentiality of statements made during front end services
(May they be used in court? How to handle the problem of case team members also part of court process if petition issues.)
- Not public records
- Not deemed probation cases – so no criminal record sent to criminal history systems board.

Separate Truancy System

- Each school must have a DOE certified system
(DOE will articulate standards and certify any program that meets them.)
(What about non-public schools?)
- Articulate in statute minimum steps a school must take before it refers to the front end.
- Define what school must show in application for petition to court
- Identity the administrator who must handle truant cases; that person must continue to appear as petitioner

II. Court Process

Jurisdiction: Juvenile Ct and Gloucester and Brookline District Ct.

Venue: residence of the child – include a mechanism for transfer.

Who is the applicant? Who has standing to apply for petition which seeks determination that child is a CHINS?

- Police
- Parent or guardian with custody
- Supervisor of attendance – or administrator designated to handle truancy.
- DSS – (Should this be limited to situations where a 51A investigation is under way.)

Offenses:

ABA strongly suggests that these behaviors not be described as status offenses and that the label accurately reflects the intent of the statute.

(Reforming Juvenile status offense laws, ABA , p22)

The offenses still need to be reviewed.

- Under 18, Runaway (c119. 21, 39E, par 2)
- Under 18, Refusal to obey lawful and reasonable demands of parents (c119. 21, 39E, par 2)

(Statute group recommends specifying elements of this offense to avoid low level behaviors. Should it include language similar to that in statute governing mental health commitments – requiring some kind of endangerment to the child?)

- Aged 6-16, persistently and willfully fails to attend school (c119. 21, 39E, par 3)
- Aged 6-16, persistently fails to obey lawful and reasonable school regulations.(c119. 21, 39E, par3)

Criteria for application for petition to be accepted:

If parent is petitioner

Statement from the front end agency stating that petitioner consented to and participated in services, case was not successfully resolved, time for services has ended, or no more benefit is likely.

If school is petitioner

Statement that certified truancy program has been tried and statement from the front end. In the absence of a certified truancy program, a showing that reasonable efforts were taken to address the issue.

If Police officer is petitioner:

Show that there is a risk of harm to child or others by going directly to the front end.

Any petitioner may attempt to show they are entitled to skip the first step for any of the exclusion criteria.

Procedure at filing of application:

- Intake will include data collection that is compatible with and complementary to that collected at the front end.
- Child will be assigned to a probation officer, but this matter will not be deemed a 'probation case' for purposes of reporting to the criminal offender record information system – (See Chapter 6 section 168A)
- *Should a preliminary hearing date be set?*
- Notice by summons to parents, child, and counsel for each.

Has the child been brought to court by a police officer?

If Yes and in custody of police, either under CHINS precept/warrant because child has failed to appear in response to summons when petition was filed (39E) or is a runaway (39H):–

(Consider the issue of arrest – NY refers to 'limited custody', the children are not 'under arrest' so presumably not arraigned. What is the import to the criminal records systems? CORI seems to be triggered whenever there is a Probation case – is it also triggered by arrest?)

Then - currently statute requires that petition issues immediately.

Should the procedure for filing application above be followed?

Detention

- *If a child is excluded from the front end and brought to court, under what circumstances is detention allowed? Where? How long?*
- *Should there be a hearing? Counsel to child and parent?*
- *What are criteria? Standard of proof?*
- *Duration of detention*
(In NY 72 hrs or next session)

1. If application for petition has not been filed:

- Findings required in order to detain:
No benefit or eligibility for front end services
No other options for placement
(In NY if the child is >16 findings must state 'special circumstances')

2. If application has been filed or petition has issued, or child is already adjudicated:

- Findings required in order to detain:
Child not likely to appear,
Home not in best interest,
Alternative placements are exhausted

Existing practice regarding detention: If court is not in session, police and probation decide. Statute allows for placement with family, medical facility or temporary shelter. Lock up is prohibited by 39H and federal law (42 USC 5633(a)(11)(12)).

Statute research group reports that in practice they are sometimes sent to DYS or Juvenile lockup.

Informal assistance by Probation (This is currently the *'preliminary inquiry'*)

- What is the goal? (*Not likely the same as at the front end, but what? Is keeping the family together a consideration but not a goal?*)
- Require data collection and documentation of all services provided to family and child, in a format that is compatible with that used by front end.
- Probation Officer has discretion to immediately refer to front end unless the family has already been discharged for this particular problem
- Probation Officer will join the front end case management team, essentially acting as mediator creating an agreement among parents, child and front end case manager. The CHINS agreement will be approved by the PO.
- Duration of probation assistance:
3 months with potential for 3 month extension
(*Procedure for obtaining the extension?*)
- PO has discretion to access any services, does not need to be limited to those provided by front end
- Temporary DSS custody is not permitted.
Temporary out of home placement is possible – this can be compelled, so both parent and child need counsel at the filing of the application.

Preliminary Hearing –

- *What is the Question presented? Is it 'shall the petition issue'?*
- *What is the standard to dismiss?*
- Child should be represented by counsel.
- Parents should be represented by counsel.
- *When is the hearing scheduled? Should a date be set at time of filing? What is the hearing date? Is it at 3 months, with potential for delay of another 3 months?*
- *Should be before a judge?*
- *CHINS agreement created at preliminary inquiry should be presented at hearing.*
- *Who is petitioner? If Parent or school should they be required to appear as adversary to child? If it is police should it be the DA? Since PO is mediator/leader of informal assistance should they be prohibited from prosecuting at this hearing.*

What happens between the issuance of the petition and the trial on the merits?

Is the goal set out in CHINS agreement

Does the court now become the child's advocate for services?

Is temporary placement possible? Should it trigger another hearing?

How long may petition be open before adjudication?

Adjudication

- *Hearing – but eliminate right to trial by jury*
- *Standard of proof?*
(Currently beyond a reasonable doubt. Statute group recommends preponderance of the evidence. NY has 2, one for facts alleged in petition – BRD, one for determination that disposition is in best interest of the child - POE)
- *Written orders stating reason for disposition.*
Standard for disposition: (Should it be best interest of child, reasonable efforts to keep child in the home? NY has exception for situations where parent has committed crime affecting sibling or other parent)

Dispositional orders

- *Permit child to remain at home*
- *Place child in care of another adult or relative*
- *Custody to DSS*
With or without out of home placement
Permit order that it must be out of home.
Initial term of 3 months - Extensions of 3 months, with maximum time period of 1 year.
No detention in secure facility – (but what is the alternative for safety requirements?)
How to terminate placement?
May parent petitioner seek change or termination of placement?
- *Suspension of petition – delay in disposition.*
Should the court be able to send family to front end for 2d or 3d try?
If school is cooperating by providing education services should case stay open without finding for a while?
What would time limit be?
- *Discharge – Court may on its own motion convert this to a care and protection*
- *Probation - Chins agreement monitored by probation*

Enforcement

*Contempt for parent or child? Drivers license removal?
Detention in a secure facility?*

Nature of adjudication

Not a conviction

When child is apprehended by the police for one of these behaviors it is not deemed an arrest

CHINS adjudication cannot be used to deny any privilege, right, license

Court and front end records never become public

Records are all kept separate from adult records.

Permanency Hearing

Require after 12 months of out of home placement.

(Currently required (119.29B) but not always held.)
