

SENATE DOCKET, NO. 903 FILED ON: 1/13/2009

**SENATE . . . . . No. 68**

**The Commonwealth of Massachusetts**

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:*

Section 1:

Whereas families in the Commonwealth whose children are truant, runaway and act in a fashion that interferes with their parent’s ability to adequately care for and protect said children often require the assistance of government agencies, including schools, human services agencies and the courts, as well as non-governmental service providers; and

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

Whereas collaboration among the public and private sectors is required to ensure that all children and families receive the services they need to succeed; and

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

Whereas services are not consistently available in all communities;

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

It is the intent of the General Court to establish and fund an accountable, community-based system to provide consistent services throughout the Commonwealth to address the needs of families and children requiring assistance. The goal of said system is to preserve and strengthen families while ensuring the healthy behavioral, social, and educational development of the child, and to provide opportunities to divert children from the juvenile justice and child protection systems. Services shall focus on supporting a stable environment and strengthening the family as a whole while emphasizing parental responsibility. Nothing in this act is intended to abrogate the responsibility of the education system to provide educational services as required by state and federal law. Subject to appropriation, said community-based service system shall consist of a network of public and private providers that will provide service coordination, referrals and services in the community. It is further the intent of the General Court to establish and fund a mechanism for the collection and analysis of information which will enable the Commonwealth to evaluate the effectiveness of services and to identify gaps in services.

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## SECTION 2

The General Laws as appearing in the 2008 official edition are hereby amended by adding after chapter 6A section 16G the following new section: Section 16H.  
Community-based services for families and children

Section 16H. (a) 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 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 or legal guardian, thereby interfering with said parent’s or legal guardian’s ability to adequately care for and protect said child or repeatedly fails to obey the lawful and reasonable regulations of his school or who 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 continue residing with their families in their home communities; to continue as students in their community schools, and to strengthen relationships with their families.

“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.

(b) Subject to appropriation or availability of third party reimbursement, the secretary shall

(1) establish a network of child and family service programs throughout the Commonwealth to provide community-based services to families with children requiring assistance.

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(2) develop a model for delivery of community-based services to families with children requiring assistance which shall form the basis of the network of child and family service programs developed pursuant to Section (b).

(3) make grants for service coordination which may include outreach, intake, screening, assessment and referral. Referral may be provided for services, including but not limited to: eligibility, behavioral health, medical, counseling, safety, education, learning disabilities, employment, mentoring, family and parent support, civic engagement and community service, after school and out-of-school opportunities, residential programs, non-residential programs, crisis management, and case management.

(4) create a data collection system for use by programs within the network of child and family service programs developed pursuant to Section (b) which maintains the privacy of clients served, assists programs and the executive office of health and human services in addressing the needs of the population to be served, collects information related to, among other things, the insurance status and benefit coverage of clients served, court information, and other information that may assist the program and the secretary in providing services, identifying service needs and gaps, and evaluating the effectiveness of community-based services.

(c) Participation in community-based services shall be voluntary and families or children may terminate their involvement at any time.

(d) Any documentation of community based services provided to the family and child shall not be a public record. Statements made by the family and child while receiving services from the program shall be treated as confidential. Such statements may not be used in school disciplinary proceedings and may not be admitted into evidence in any court proceeding arising from the circumstances which brought the family and child to the program unless the child and family waive their confidentiality or unless a court finds that such inadmissibility would result in substantial harm to the child.

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

(f) 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 a 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.

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SECTION 3: Section 16H(b)(1) shall take effect 36 months after the effective date of this legislation, to enable the Secretary to engage in the planning process required to establish the service delivery network provided therein,

SECTION 4: Section 16H(b)(2) shall take effect 12 months after the effective date of this legislation.

SECTION 5: Section 16H(b)(3) shall take effect 24 months after the effective date of this legislation.

SECTION 6: Section 16H(4) shall take effect 24 months after the effective date of this legislation.

## **Court section**

SECTION 7: Section 21 of Chapter 119 of the General Law, as appearing in the 2008 Official Edition, is hereby amended by striking lines 8 to 16 and inserting in place thereof the following:

Child requiring assistance: a child between the ages of 6 and 18 who 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 or legal guardian, thereby interfering with said parent's or legal guardian's ability to adequately care for and protect said child or repeatedly fails to obey the lawful and reasonable regulations of his school or who is habitually truant;

SECTION 8: Section 21 of Chapter 119 is further amended by adding after the definition of Department the following definitions:

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;

SECTION 9: Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to 39J, inclusive, and adding the following new sections:

### **Section 39E. Jurisdiction**

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

### **Section 39F. Nature of the Proceedings**

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1. Proceedings pursuant to sections 39E to 39Q, 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. Proceedings pursuant to sections 39E to 39Q, inclusive, shall be confidential and not be open to the public.
3. For the purpose of section 39E to 39Q “parent” shall include a legal guardian with custody or legal custodian of a child.

## **Section 39G. 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 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 a 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.

(iii) whether the family was informed of and referred to a community based services program provided under Section 16H of chapter 6A.

(e) that the child and family require assistance.

(f) when the petitioner is a parent or guardian, whether they have applied for or received services from a community based services program provided under Section 16H of chapter 6A

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

(a) a police officer;

(b) a parent;

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(c) a school district;

3. Upon the filing of a request for assistance, the clerk of the court shall provide the parent identified in the request for assistance information about the community based services program provided under section 16H or chapter 6A. or may refer the parent to a community based services program provided under section 16H of chapter 6A in the community where the child resides.

## **Section 39H Notice**

1. Except as provided in subsection 2, on the filing of a request for assistance pursuant to this section, the court may 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 originated 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 and ensure the parent has a copy of the request for assistance. The court is not required to issue a summons to that person.

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 39I Scheduling the Fact Finding Hearing**

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

## **Section 39J Appointment of Counsel**

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

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

3. The court shall determine whether the parent of a child alleged to require assistance is indigent. If the court determines that the parent is not indigent, the court shall assess a \$300 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 39K Preliminary Inquiry by Probation**

1. 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 community based 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 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;

(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 community based services program or 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.

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(b) The Commissioner of Probation shall report annually to the legislature and the Child Advocate on the assistance provided by probation officers to children and families under Sections 39E to 39Q. The report shall be filed on October 1 of each year and shall include for each juvenile court district: the number of children and families receiving assistance, the reason for presentation, 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.

3. Conferences and referrals arranged under this section may extend for a period not to exceed 120 days from the date that the request for assistance 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 request for assistance 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.

### **Section 39L Custody, Failure to Appear**

If, after a hearing at which the child 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 place the child in the temporary custody of the Department of Children and Families. Prior to the court granting 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 preventative services as an alternative to removal.

An order 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 39E through 39Q.

### **Section 39M Withdrawal of Request for Assistance**

The petitioners may, upon a showing that the circumstances which brought the matter before the court have been resolved, withdraw the request for assistance at any point prior to a hearing to determine the disposition of a request for assistance.

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## **Section 39N Fact Finding Hearing**

1. The court shall hold a fact finding hearing in which it shall receive evidence from the petitioner, the parent, and the community-based services program if involved with the family, and the recommendation of the probation officer.
2. At any hearing held to determine whether a child requires assistance, the child and his attorney shall be present and the parents or legal guardian shall be given an opportunity to be heard. The petitioner who files the request for assistance shall bear the burden of presenting evidence proving that the child requires assistance.
3. At the fact finding hearing the court shall consider any available documentation of attempts to provide appropriate services and determine whether such efforts or services provided were sufficient. With the consent of the parent(s) and child the court may consider any written reports from service providers which would otherwise be subject to confidentiality or privilege.

The court may order the child and the parent to participate in a community-based services program established under section 16H of chapter 6 regardless of whether or not the child and parents have previously used community based services on a voluntary basis. If the designated program thereafter determines that the case has been successfully resolved, it shall so notify the court, and the court shall dismiss the request for assistance.

3. After hearing all of the evidence the court shall either:

- (i) dismiss the request for assistance because the circumstances which led to the filing of a request for assistance have been resolved and the court finds that the child and family do not require assistance;
- (ii) adjourn the hearing for up to 60 days because it finds that the interests of the child would best be served by continued informal assistance, in which case the court shall, with the consent of the child and his parent, refer the child to a probation officer or refer the child and family to the designated program for additional community-based services assistance; or
- (iii) If the court finds the allegations in the petition have been proved at the hearing beyond a reasonable doubt, it may adjudge the child named in the petition to be a child requiring assistance and schedule a hearing for disposition

4. 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 the fact finding hearing without the consent of the child or family member who made the statement, but may be received by the court at the hearing for disposition

## **Section 39O Disposition Hearing**

1. Upon making a finding that a child requires assistance, the court shall convene a meeting of the probation officer who conducted the preliminary inquiry, a representative from the community-based services program, if involved with the family, the petitioner, a representative from the child's school, the child's parent, a representative of the department of children and families, if involved with the family, and any other person the

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court deems helpful in determining the assistance to be offered to the child and family. Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information, the persons at the meeting shall present a written report to the court to advise the court on appropriate treatment and services for the child and family and appropriate placement for the child and appropriate conditions and limitations of such placement. The court, taking into consideration those reports 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 order, 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 and with such conditions and limitations as the court may recommend, place the child in the custody of the department of children and families. Prior to the court granting 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 preventative services as an alternative to removal.

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

(i) may not refuse out of home placement when requested by the child if there is a substantiated history of abuse and neglect in the home by the parent or legal guardian;

(ii) , shall direct the type and length of any out-of-home placement;

(iii) shall give due consideration to the recommendations of the court.

(d) The court may not order the child to be placed in the custody of the department of youth services and may not be placed in any department of youth services facility.

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2. A child found to require assistance shall not be placed in a locked facility or any facility designated or operated for juveniles adjudicated delinquent. However, if such child meets applicable admission criteria, such child may be placed in a facility which operates as a group home or psychiatric facility to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility provided no such contract exists limiting the group home to referrals from DYS.

### **Section 39P Duration of Assistance**

1. Any order of disposition under Section 39O 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 request for assistance.

### **Section 39Q. Custodial Protection**

1. (a) A child may be taken into custodial protection for engaging in the behaviors described in section 39G, 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 legal guardian.

(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 program designated to provide community-based services for the geographic region which constitutes the district of the juvenile court department within which the child was taken into custodial protection or in which the child resides, at a time and place specified in writing; or
- (ii) forthwith and with all reasonable speed take the child directly, and without first being taken to the police station house, to the program designated to provide community-based services for the geographic region which constitutes the district of the juvenile court department within which the child was taken into custodial protection or in which the child resides,; or
- (iii) release the child to a representative of the department of children and families, if the law enforcement officer has reason to believe that the child is in the care or custody of such department; or

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

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

(e) A child may not be securely detained in a police station or town lockup. At no time shall a child be placed in any locked facility under the supervision of any police department, sheriff department, or department of youth services.

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

### **SECTION 12**

Notwithstanding any general law to the contrary the secretary of the executive office of health and human services and the commissioners of departments of public health, mental health, developmental services, children and families, youth services and transitional assistance may enter into memoranda of understanding among themselves and with the department of education, office of the commissioner of probation, the juvenile court, municipal police departments and school districts to provide coordination, delivery, and funding of services to children and families who, pursuant to the provisions of section 16H(7)(b) of chapter 6A of the General Laws, are not eligible for community-based services established pursuant to section 16H of chapter 6A.