

(2) CHINS Kids & Families

I *the needs of families whose children are truant, runaways, or whose conduct interferes with their parent's ability to adequately care for and protect them. The plan shall propose a system of community-based programs to assist these children and families by providing services on a continuum of increasing intensity with the goal of keeping children out of the juvenile justice and child protection systems. The plan shall examine: (i) the existing complex system of services available from multiple public and private agencies; (ii) the differences in service delivery throughout the state; (iii) the need for immediate response to stabilize a family in crisis and to connect the family to services in their own community; and (iv) the collection and analysis of information needed to evaluate and identify gaps in service to such children and families throughout the commonwealth;*

II Background and overview of current CHINS process

In 1973 the Commonwealth enacted the child in need of services (CHINS) statute to authorize court intervention in cases where a child or youth engages in certain undesirable behaviors, sometimes referred to as "status offenses." These actions that are not offenses against society but rather behaviors that are against a child's or youth's self interest. It was intended that a CHINS proceeding be considered non-punitive and was designed to provide services to correct the behaviors that led to the filing of the CHINS petition.

M.G.L. Ch. 119 Sec. 21 defines a "child in need of services" as a child between the ages of 6 and 17 who: (a) repeatedly runs away from the home of a parent or legal guardian; (b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent's or legal guardian's ability to adequately care for and protect the child; (c) repeatedly fails to obey lawful and reasonable school regulations; or (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter.

A CHINS is initiated when a parent or legal guardian files an application for a petition with the juvenile court alleging that his or her child is in need of services because of (a) or (b) above or a school supervisor of attendance files an application because of (c) or (d) above. While a police officer may file a petition on behalf of a runaway or a child's refusal to obey parental rules, this is done very infrequently. A school attendance supervisor may file a CHINS application based on (c) or (d) above.

CHINS filings and proceedings are not conducted uniformly in the Commonwealth, and practices vary widely from county to county. If a CHINS warrant has issued, the law requires that the child be brought immediately before a judge and the petition must issue. In most cases, however, there is an attempt to resolve the case informally with the assistance of a probation officer. During this informal phase, a probation officer may

Office of the Child Advocate Comprehensive Plan

suggest an array of services that might be helpful to the child and family. However, it is the child and family who decide whether to participate. In some juvenile courts, the clerk's office assumes a role and may conduct the initial hearing as to whether the CHINS petition should issue. If informal efforts fail to achieve the desired improvement in a child's behavior, the petition will issue and the matter will go before a judge. The judge must appoint counsel for the child. The judge may continue the matter informally in hopes that it can still be resolved without the need for a formal trial. The judge has the option of allowing the child to remain at home on certain conditions or to place the child in DCF care on CHINS bail status. While a child has the right to a trial by a jury of six persons, the overwhelming majority of CHINS cases are jury waived and resolved by agreement. If a formal hearing is held, the judge must determine whether the allegations in the petition have been proved beyond a reasonable doubt. If so, the child will be found to be in need of services. After adjudication, the judge again may order that the child remain at home, place the child in DCF, or place the child with another party on certain conditions. CHINS are required to be reviewed by the court at least every six months.

III Problems/Concerns

Since the CHINS statute was enacted in Massachusetts in 1973, numerous studies and reports have reviewed the operation of the CHINS statute and documented significant problems with the existing CHINS process.

- The 1987 Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Need of Children offered several CHINS recommendations but did not make detailed recommendations on the CHINS statute because the Commission members represented "widely divergent views as to how extensively the courts should be involved in CHINS-type cases, if at all." (cite)
- In 1989 the Special Legislative Committee on Children in Need of Services offered several recommendations including requiring the development and implementation of a statewide social service needs assessment."
- The Commissioner of Probation's study *In Jeopardy and At Risk: CHINS Cases in Massachusetts* issued in 1998 provided statistical information regarding the failure of the CHINS system to produce the desired result of deterring youth from delinquency and criminal activity. The report noted that 54% of all CHINS youth were arraigned on delinquent or criminal charges within three years of their first CHINS petition.
- [The Boston Bar Association Task Force on Children In Need of Services filed their Report on Truancy on July 30, 1998. The Report analyzed and made recommendations on the CHINS process.](#)
- In 1994 the Supreme Judicial Court Commission on Juvenile Justice's CHINS subcommittee issued its report recommending repeal of the then existing CHINS statute, development of a CHINS diversion program pending repeal, and legislative changes to formalize and clarify the CHINS process.

In 2000 Citizens for Juvenile Justice released its report entitled *CHINS Report Card: The Unfinished Agenda*. This progress report on the implementation of CHINS reform recommendations gave the Commonwealth an overall grade of "C" with respect to the state's ability to prevent delinquent and criminal behavior among children in need of

Office of the Child Advocate Comprehensive Plan

services. This report noted the “complex nature of CHINS cases, the systematic dearth of services and the failure to hold all parties accountable.” (p. 20)

As the above suggests, there is widespread agreement that the CHINS process is in need of revision. The problems most commonly cited with respect to the process are the following:

- Need to seek court involvement in order to access services
- Perceived punitive nature of a CHINS proceeding
- CHINS focus on the child rather than the family (i.e. “child in need of services” as opposed to “family in need of services”)
- Delay in accessing timely services and treatment resulting from court involvement
- Inadequacy of services and coordination of services
- Time required for parties to appear in court, often requiring absences from school or work
- Limited power of judges to make and enforce specific orders, i.e. lack of “teeth” in the process

There have been various amendments to the CHINS statute since its enactment in 1973, including those that were included as part of the Child Welfare Law of 2008. Most persons concur, however, that the CHINS process is still not accomplishing its intended purpose of providing appropriate and timely services to children and youth who need them thereby reducing the likelihood that these children and youth will become involved in delinquent or criminal activity.

Recent Reform Efforts

During the 2007-2008 legislative session, Senator Karen E. Spilka filed Senate Bill 113, “An Act Regarding Children and Families Requiring Assistance,” which sought to significantly reform the CHINS process in Massachusetts. Senate Bill 113 was redrafted as Senate Bill 2570 and reported favorably from the Joint Committee on Children, Families and Persons with Disabilities. Senate Bill 2570 was then referred to the Senate Committee on Ways and Means, but was not acted on before the end of the two year legislative session.

In January 2009 Senator Karen E. Spilka and Representative Paul J. Donato filed identical bills, Senate Bill 68 and House Bill 129 entitled “An Act Regarding Families and Children Engaged in Services.” This proposed legislation is a redrafted version of the original language filed by Senator Spilka during the 2007-2008 session, which would overhaul the existing system for handling CHINS cases. The bills promoted a community-based system with a network of public and private providers that would provide service coordination, referrals and services in the community as a response to children requiring assistance. The bills also included a mechanism for the collection and analysis of information that would enable the Commonwealth to evaluate the effectiveness of services provided. The proposed legislation had family involvement as a cornerstone and provided for court involvement only when other efforts to obtain services to remedy the child’s or youth’s problems had failed.

Deleted:

Deleted: 2329

Deleted: 1278

Deleted: .

Office of the Child Advocate Comprehensive Plan

Senate Bill 68 and House Bill 129 were reported favorably by the Joint Committee on Children Families and Persons with Disabilities as redrafted. The redrafted versions, Senate Bill 2329 and House Bill 4632, were then referred to the Senate and House Committees on Ways and Means. While the proposed legislation remained in House and Senate Ways and Means until the end of the 2009-2010 session, it is anticipated that the bills with some changes, will be refiled in January 2010. EOHHS has raised a number of concerns about the proposed legislation, including its overly proscriptive nature, obstacles to court involvement for those who seek it, and the likelihood of high costs associated with the community based system that is being proposed.

It is important that discussions continue among stakeholders about the best means for providing time access to appropriate services to children and youth in need of them. Various new programs, including the Children's Behavioral Health Initiative and DCF's Integrated Casework Practice Model (ICPM), offer promising opportunities for accessing services without the need for court involvement.

IV Recommendations

Deleted: did not make it out of

Deleted: the _____ committee in 2009,

Deleted: I