

S113

[SIMILAR MATTER FILED DURING PAST SESSION
SEE NO. OF]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT REGARDING COMMUNITY SERVICES FOR CHILDREN AND FAMILIES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 4

2 Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to 39J,
3 inclusive, and adding the following new sections:
4 Section 39K. "Child requiring assistance", a child below the age of eighteen who
5 repeatedly runs away from the home of his parents or legal guardian, or repeatedly fails
6 to obey the lawful and reasonable commands of his parents or legal guardian, thereby
7 resulting in said parent's or legal guardian's inability to adequately care for and protect
8 said child, or repeatedly fails to obey the lawful and reasonable regulations of his school,
9 or who is a habitual truant.

10 “Habitual truant”, a child who fails to attend school for more than 8 school days in a
11 quarter without a reasonable excuse.

12 Except in section 39O(4), “parent” includes a legal guardian or other person legally
13 responsible for a child’s care.

14 Section 39L.

15 1. The Juvenile court department has original and exclusive jurisdiction over any
16 proceeding commenced under section 39N alleging that a person is a child requiring
17 assistance.

18 2. On its own motion and at any time during proceedings brought under sections 39K
19 through 39X, the court may substitute a care and protection petition pursuant to Chapter
20 119 section 24 of the General Laws for a request for assistance to determine whether a
21 child requires assistance.

22 3. Proceedings involving a child alleged to require assistance shall originate in the
23 juvenile court division or district in which the child resides. On motion made on behalf
24 of the child, or by his parent or other person legally responsible for his care, or on the
25 court’s motion, and for good cause shown, the court may transfer the proceedings to
26 another district

27 Section 39M Nature of the Proceedings

28 1. Proceedings pursuant to sections 39K to 39X, inclusive, shall not be deemed criminal
29 proceedings and any record of these proceedings, including the filing of a request for

Commented [MD1]: In some places, but not others, the bill refers to “other person legally responsible for a child’s care.” I added this definition for consistency’s sake.

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Commented [MD2]: Without this change, the Juvenile Court has jurisdiction over a personal injury lawsuit filed by a child requiring assistance.

32 assistance and creation of a docket, shall not be entered in the Criminal Offender Record
33 Information System.

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

38 3. No adjudication pursuant to sections 39K through 39X shall operate as a forfeiture of
39 any right or privilege or disqualify any person from subsequently holding public office or
40 receiving any license granted by public authority.

41 Section 39N.

42 1. A proceeding to determine whether or not a child requires assistance is originated by
43 the filing of a request for assistance, stating the petitioner's information and belief:

44 (a) that the child repeatedly runs away from the home of a parent, or repeatedly
45 fails to obey the lawful and reasonable commands of the parent, thereby resulting
46 in the parent's inability to adequately care for and protect said child, or that the
47 child is habitually truant or repeatedly fails to obey the lawful and reasonable
48 regulations of his school;

49 (b) that the child was under the age of 18 at the time the specified acts took place;

50 (c) specific acts on which the allegations are based and the time and place they are
51 believed to have occurred;

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Commented [MD3]: I understand Sen. Spilka's interest in changing the compulsory school attendance law. But as long as children are required to attend only until they turn 16, we recommend that the bill use that same age as the ceiling for truancy cases.

58 (d) when the petitioner is a school district, the request for assistance shall also
59 include:

60 1. In a case alleging that a child is habitually truant, a statement of the specific
61 steps taken by the school district to comply with its obligations under its truancy
62 prevention program under chapter 69, section 10. The request for assistance
63 shall also state whether or not the child and his family have participated in the
64 truancy prevention program;

65 2. In a case alleging that a child has repeatedly failed to obey the lawful and
66 reasonable regulations of the school, a statement of the specific steps taken by the
67 school to improve the child's conduct.

68 (e) that the child and family require services.

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

70 (a) a police officer;

71 (b) a parent;

72 (c) a school district;

73 3. The petitioner shall attach to the request for assistance the notice of termination of
74 community-based services as provided for in chapter 6A, section 16H(11)(b) or notice of
75 ineligibility as provided for in chapter 6A, section 16H (7)(e). Except as provided below,

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Commented [MD4]: A judge or a school district could read the "reasonable steps" language as imposing a separate requirement on school districts. Referring to compliance with the truancy prevention program requirements eliminates this possibility.

Deleted: certified by the department of education pursuant to chapter 69, section 10;

Commented [MD5]: This language is similar to what had been in draft 3, but it is separated from the truancy cases because the truancy prevention program requirement does not apply to "habitual school offender" cases.

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Deleted: , legal guardian or other person legally responsible for the child's care;

84 the clerk shall not accept for filing any request for assistance that does not have attached
85 thereto said notice of termination or ineligibility.

86 Any person or agency seeking to file a request for assistance pursuant to this section
87 which does not have attached thereto the notice of termination of community-based
88 services shall be referred by the clerk of the court to the program designated by the
89 secretary of the executive office of health and human services to provide community-
90 based services in the juvenile court district where the child resides.

91 If the petitioner is a police officer, the clerk may accept a written statement of the reasons
92 for the officer's belief that the referral to community-based services prior to filing the
93 request for assistance would present a risk of harm to the child or others in lieu of the
94 notice of termination or ineligibility. The clerk shall then immediately contact the
95 designated community-based services to provide notice that a request for assistance has
96 been filed.

97 Section 39O

98 1. Except as provided in subsection 2., on the filing of a request for assistance pursuant to
99 this section, the court shall cause a copy of the request for assistance and summonses to
100 be issued, requiring the child and each parent to appear at the court at a time and place
101 named to address the request for assistance.

102 2. In proceedings originated by a parent, the court shall cause a copy of the request for
103 assistance and notice of the time and place to be heard to be provided to that person
104 when the request is filed. The court is not required to issue a summons to the person.

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Deleted: , legal guardian or other person legally responsible for the child's care the court shall cause a copy of the request for

Deleted: served upon any parent of the child or other person legally responsible for the child's care who has not signed the request for assistance, provided that the address of such parent or other person legally responsible is known to the court or is ascertainable by the court. ¶

118 3. ~~A copy of a request for assistance served or provided under subsection 1 or 2 shall be~~
119 accompanied by a notice that, in the event that the court deems it necessary to place the
120 child in the care and custody of the department of social services or any other agency,
121 said parent may be named as a respondent in any child support proceeding brought in
122 connection with the child's care.

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123 ~~4. Unless service of the summons required by this section is waived in writing, such~~
124 summons shall be served by a constable or police officer, either by delivering it
125 personally to the person to whom addressed, or by leaving it with a person of proper age
126 to receive the same, at the place of residence or business of such person, and said
127 constable or police officer shall immediately make return to the court of the time and
128 manner of service.

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129 Section 39P

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

134 Section 39Q

135 1. The clerk shall appoint counsel for the child when the request for assistance is filed.
136 The clerk shall cause a copy of the request for assistance and notice of the time and place
137 of the fact finding hearing to be delivered to counsel at the time of appointment.

140 .

141 2. The court shall determine whether the parent of a child alleged to require assistance is
142 indigent. If the court determines that the parent is not indigent, the court shall assess a
143 \$300 fee against the parent to pay for the cost of counsel appointed for the child.

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144 3. If a parent does not originate the proceedings and is determined to be indigent, the
145 court shall appoint counsel for the parent when the request for assistance is filed. The
146 clerk shall cause a copy of the request for assistance and notice of the time and place of
147 the fact finding hearing to be delivered to counsel at the time of appointment.

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148 4. If a parent is indigent but is still able to contribute toward the payment of some of the
149 costs of counsel, the court shall order the parent to pay a reasonable amount toward the
150 cost of appointed counsel.

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151 Section 39R

152 1. The chief probation officer or his designee shall conduct a preliminary inquiry to
153 determine whether in his opinion the best interests of the child and family require that
154 crisis intervention services be provided to the child and family.

155 The probation officer in his discretion may:

156 (a) refer the family and child to the program designated to provide community-
157 based services for this juvenile court district or division; the probation officer may
158 confer with the provider of community-based services to resolve the situation
159 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 in the referrals or conferences arranged by the probation officer the probation officer or if the probation officer is not able to refer the child or his parents to an appropriate 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.

(b) The Commissioner of Probation shall establish a data collection system for use by probation officers assisting children pursuant to sections 39K through 39X 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 availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

3. Conferences and referrals arranged under this section may extend for a period not to exceed 90 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.