



WILLIAM J. LEAHY
CHIEF COUNSEL

The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212
FAX: (617) 983-8495

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

NANCY T. BENNETT
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

MICHAEL DSIDA
DEPUTY CHIEF COUNSEL
CHILDREN AND FAMILY LAW DIVISION

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Senator Karen E. Spilka
State House
Room 511-C
Boston, MA 02133

Dear Senator Spilka:

Thank you for your continued willingness to work with stakeholders in your efforts to overhaul the current CHINS law. We appreciate having the opportunity to participate in this process.

As was the case with last session's bill, the bill that you have introduced this session is a significant improvement over current law. We strongly support the goal of using community-based service programs as a way to eliminate the need for court intervention. This system is consistent with the approach that is required (although not consistently followed) in the child welfare arena. Specifically, DCF is required to make reasonable efforts to prevent the need for removing a child from her home if she is alleged to be abused or neglected. Imposing – and following through with – a similar requirement for children requiring assistance matters is good for children, good for families, good for communities, and good for the state's budget.¹

The bill also recognizes that some current CHINS cases could be resolved relatively quickly through the provision of respite care. By defining “community-based services” to include “voluntary respite residential placement of the child for up to 21 days” (line 212), the bill could eliminate the need for a significant number of petitions filed by parents.

¹ The community-based services requirement is complemented by the requirement that the Probation Department report annually to the Child Advocate regarding its activities in children requiring assistance cases. (Line 496.) Currently, some probation officers do not make significant efforts to connect children or families with services. The proposed reporting requirement will help promote accountability and help identify types of services that are not readily available in communities.

We also strongly support the proposal to require schools to develop anti-truancy programs. The bill correctly requires schools to make efforts to prevent truancy in individual cases before seeking court assistance.² As I have noted previously, it is essential that these efforts target the conditions that might lead a child to miss school in the first place (such as a school's failure to identify a student's special education needs). Fortunately, the Department of Elementary and Secondary Education has indicated that it will have that focus in its truancy prevention certification program.

In several respects, however, the bill retreats from some of the necessary protections provided under current law. First, under current law, in order for a child to be "truant," her absences from school must be willful. Willfulness should continue to be an essential element of the definition of a habitual truant. CPCS attorneys regularly represent clients whose mental health conditions (such as anxiety disorders, post traumatic stress disorder, and agoraphobia) directly contribute to and cause the student to miss school. For example, in one case, an agoraphobic client would wake up every morning and get showered and dressed for school, but she could not get herself out the door because she was terrified. A child like that should not be subject to court proceedings. At the very least, she should be permitted to contest a claim that she is truant by demonstrating that her absence from school has not been willful.

Another problematic provision is proposed § 39U(2). That provision would allow the court to "order" a parent and a child to participate in community-based services. While the goal may be laudable, authorizing the court to order a child or parent to participate in services could lead to "bootstrapping" criminal charges, through contempt proceedings, onto what is unquestionably not criminal conduct. While the bill later states that a child cannot be held in a locked facility or a DYS facility, the possibility of criminal prosecution remains if the child or parent does not participate in services after being ordered to do so. We strongly urge you to delete this provision or make it clear that a failure to abide by the order cannot subject a child or parent to criminal or civil contempt proceedings.

We also urge you to reconsider the decision to change burden of proof. The bill replaces the current "beyond a reasonable doubt" standard for CHINS cases with a "preponderance of the evidence" standard. This change might be warranted if there were a large number of CHINS cases in which the petitioner is unable to satisfy the burden of proof. But that does not seem to be happening under current law.

We would also like to propose changes to other parts of the bill that are significant improvements over the current system but could be enhanced to make the bill even stronger:

² Proposed c. 6A, § 16H(7)(e), which creates new requirements that apply in expulsion cases, suggests that a school is not required to have a truancy prevention program or otherwise consider the special education needs of students at risk of being excluded from school. That is inconsistent with proposed G.L. c. 69, § 1P, which states that "School districts shall establish a truancy prevention program...."

1. Withdrawal of petitions: Unlike current law, the bill properly authorizes parents to withdraw a petition any time before trial. The bill could be strengthened by giving the parent the discretion to withdraw the petition for any reason or, at the very least, if dismissal of the petition is in the best interest of the child. There may be circumstances in which dismissal will be best for the child and the family, even if the situation has not been fully resolved.
2. Limits on Expulsions: The bill recognizes that students who skip school or who have behavior problems at school should not be expelled without being offered services to help address the issues that underlie their truancy or behavior problems. (Line 162.) But a community-based service program may not be the best place for those students, who may need robust special education assistance more than anything else. Schools should be required to assess students special education needs (which they may do through an anti-truancy program) before expelling a student from school for failure to comply with the lawful and reasonable rules of the school or for habitual truancy. (You may also be interested to know that education experts are growing increasingly skeptical about excluding students from school under any circumstances based on truancy.)
3. Local Advisory Boards: §16H(5)(c)(ii) – We recommend that the local advisory boards include attorneys for parents in recognition of the valuable role that parents' attorneys can play and to reflect the fact that parents have the right to counsel in certain CHINS cases.

There are also several technical changes that may need to be addressed. For example, it appears that the phrase “the child” was inadvertently omitted in line 618 (before “may not be”). We can certainly discuss those changes with you or your staff as work on the bill continues.

Thank you again for providing us the opportunity to work on this bill with you. We look forward to further discussions of the important issues that you seek to address through the bill.

Sincerely,


Michael Dsida

cc: Rep. Paul J. Donato