

Status offense systems like CHINS are designed to address the broader societal problem of children and families in crisis. What used to be personal and family issues, are now in the realm of the courts.¹ Problems, such as those exhibited in the Massachusetts CHINS system, resulted.

There is disagreement as to the original purpose of the CHINS statute, additionally; some believe that children with difficult behaviors are not receiving the services they require. The Commissioner of the Massachusetts Department of Social Services, Harry Spence, stated in reference to the ineffectiveness of the CHINS law: “I think we’ve discovered, and four commissions have documented, all of the failures of that system, and we’ve done nothing, as a Commonwealth formally, to respond to those failures that are so widely acknowledged.”³ (Lets not use this quote, it is too inflammatory.) *To illustrate the law’s shortcomings, a large number of children (between 30 and 40 percent) for whom CHINS petitions are filed, end up in Department of Social Services (DSS) custody. The CHINS law is not uniformly applied throughout Massachusetts. The court process differs from county to county. Additionally, there are high rates of recidivism. A disproportionate number of children who go through the CHINS process end up in some kind of criminal custody later in life. These are only a few examples to give you a sense of the flaws in the system.*

¹ Historically, the juvenile delinquency system dealt with youth who committed status offenses. Those youth were subject to the same dispositional or probationary options as delinquents. Consequently, courts would place a chronically truant youth in the same secure detention facility as a violent repeat juvenile offender. Several states became concerned about the short and long-term effects of placing youth engaged in noncriminal status behaviors into secure detention, and they enacted legislation replacing the status offender label with new terms, such as children in need of services (CHINS). See , Jessica R. Kendall, *Reforming Juvenile Status Offense Laws: Preventing Delinquency by Better Aiding Children and Families in Crisis*, ABA Center on Children and the Law, available on Blackboard.

³ *Id.*

There is not basis for these conclusions – it is not uniformly thought of as a ‘failed system’, it is a process that was created 30+ years ago and is now out of sync with current needs and funding trends. We now have different governmental structures, different ways of working with adolescents, different models of mental health care - In this context we need a change to better serve children and families. Some sections of the statute were never used – some may need to be changed but some are still workable. - The law office’s review of the procedure and constitutional aspects of the process will impact any changes that are made.

There is too much condemnation here.

You will be focusing on the procedural aspects of the law, analyzing the constitutional due process and equal protection rights of the children and families involved in the CHINS system.

With the advent of the current reform in the State House, the goal of CHINS has since changed.

Goal is to review current law-This too strong a statement for us at this point. See below from a literature/statute review on the origin of chins systems by Erica Kinivel and Elizabeth Sheehan:

“The Policy Rationale for Status Offender Systems

Armed with its legal mandate to protect children, states embraced status offender systems because their shift away from a punitive emphasis permitted judges to focus on acting in the best interests of children. The status offender system allowed courts to intervene in children’s lives in ways aimed at preventing misconduct from escalating into delinquent behavior, placing them on the path to productive adulthood. The design of the systems promised greater success by giving courts the discretion to focus on the particular needs of

individual youths. Reform efforts were geared towards provision of special services to address unmet needs in a non-institutionalized, community-based environment.”

A sub-goal of that is the diversion of youth exhibiting an identified behavior, from the court system, to other modes of services. The Law Office’s efforts researching and analyzing due process and equal protection procedural aspects of the CHINS law will help to achieve the goal of a more child and family-centered law. *But these matters are raised because we fear we are denying parents (without counsel) and children (where it is uncertain who prosecutes and where detention is used inappropriately and where counsel is appointed too late, etc) of basic constitutional rights. We are not looking for ‘child and family centered’ law but rather that we have a law that does not deny children basic rights and does not treat families –as institutions and each of its members as individuals - with fewer procedural protections than other entities or individuals receive. The law would not be ‘child and family centered’ but it would create a system that families can navigate and get the help they need prior to going before a Judge.*

There are several identified problems with the current Massachusetts CHINS law that relate to your project. The main and arguably most serious problems are discussed below.

The number of children that end up in DSS custody, by itself, demonstrates that there are problems in the system. *Erin – Have we have heard some task forces interpret this differently?* Yes, there has not been a majority decision about what this DSS custody means in regards to the CHINS system. Keep in mind that custody could include in-home placements Data shows that in 2005, there were 9,164 CHINS applications. Of these, 6,424 petitions were granted. Of these petitions there were 3,603 cases that were granted DSS custody in CY2005 – this is 40 % of total CHINS applications for the year When viewed against the backdrop of the overarching goal, the preservation of families, this number demonstrates that the services provided to CHINS families

are disturbingly inadequate. This is your interpretation and goal. Many will argue that the services given to CHINS families are not inadequate but that the system to get these services is. That is the big difference, the services work once the children receive them. If the numerous studies are correct that children benefit the most from growing up in their biological families, then the current state of the CHINS system is doing a large disservice to children and families in the Commonwealth.

The high rates of recidivism among CHINS is also indicative of problems with the current system. According to a 2000 report by the Citizens for Juvenile Justice, 54 percent of CHINS have a subsequent arraignment within three years.⁴ An effective CHINS law would decrease the recidivism rates. If the services provided do not do this, then there is something wrong with those services and how they are being administered. Chins is used to access services that might not be available otherwise – so we cannot say that recidivism is uniformly bad – the same is true about DSS custody – it might be the source of service – remember ‘preserving the family’ is not the goal – providing service to children is.

The Massachusetts CHINS law is not applied uniformly in the state. Though the procedure is specified in the statute,⁵ the actual practice varies from court to court and even among judges in the same court. For example, “some courts and judges permit formal hearings with sworn testimony under the rules of evidence while others limit hearings to oral reports or arguments to the court.”⁶ Thus, attorneys must separately familiarize themselves with the practice of each individual court and judge they appear before. This may additionally be problematic because it increases the chances of cases being appealed on procedural grounds

⁴ Citizens for Juvenile Justice, *Issue Briefing: DSS Gateway to Juvenile Crime*, January, 2000, available in hard copy.

⁵ See Mass. Gen. Laws ch. 119 §§ 39E-39I.

⁶ See Kilkelly, *supra* note 14, at 5.

But appeal is not necessarily a negative – this is how we create a body of case law. Uniformity might be worthwhile in some instances but we do not want to eliminate flexibility for judges dealing with kids and families in crisis. Also, due to the different regions across the state uniformity might not work. What works in Pittsfield might not work in Lowell or Boston. We need to keep in mind that Massachusetts is made up of many different regions and flexibility might be the best way to handle these regions.