

## Research Questions

### **Priority Issues**

#### **1. Deprivation of fundamental family rights**

Because parents have a fundamental right to the care and custody of their children, due process requires that indigent parents have a right to appointed counsel in all civil actions involving the potential loss of such custody to the State. CHINS proceedings are civil actions in which the courts may remove children from their parents and place them in State custody. Does due process require that indigent parents be appointed counsel in CHINS proceedings involving potential loss of custody of their children to the State?

Indigent parents receive court-appointed counsel in care and protection cases in Juvenile Court under G.L. c. 119, § 24 and Probate & Family Court under G.L. c. 119, § 23(C). The potential due process deprivation – the loss of custody of a child to the State – is the same for parents in a CHINS proceeding under G.L. c. 119, § 39G as it is in proceedings under §§ 23(C) and 24. Do principles of equal protection require that indigent parents in CHINS proceedings receive court-appointed counsel as do similarly situated parents in §§ 23(C) and 24 proceedings?

In emergency situations where custody is transferred without a hearing, G.L. c. 119, § 24 and Custody of Lori, require that courts hold post-removal hearings quickly to comport with due process. Such hearings take place within seventy-two hours after removals in § 24 and § 23(C) proceedings. Does equal protection require that post-removal hearings in § 39, CHINS cases, similarly take place within seventy-two hours?

#### **2. Purpose of CHINS orders, vagueness**

Due process requires that children have a meaningful opportunity to prepare for, and be heard at, hearings at which courts determine custodial placements. Courts in CHINS cases can extend a child's prior commitment to DSS for additional periods of six months if the "purpose of the [original commitment] order" has not been accomplished, but the CHINS statute does not require that the courts articulate this "purpose." Does due process require that courts issue explicit findings regarding the purpose of the order so that children have a meaningful opportunity to prepare for, and be heard at, hearings where courts may extend their placement in state custody?

#### **3. Separation of Powers**

Is it possible to give the juvenile court the power to order a state agency or local school district to provide services? Can we get around the separation of powers issue?

#### **4. Federal Preemption**

Do federal laws concerning detention and permanency limit the action a court may take the length of time a child can be in the custody of a state agency or the disposition of a child brought into court under arrest for a status offense?

Do existing federal program/funding requirements impose any restrictions on the Massachusetts CHINS system?

#### **Secondary issues:**

1. Can youth have the authority to give consent for services provided by or in connection with the 'Front End' diversion program when parents or legal guardian cannot be accessed on an urgent basis and/or if parents would decline to authorize a reasonably necessary service such as screening or respite
2. What should be the confidentiality/testimonial privilege status of information exchanged in "teams" assembled around a youth/family where team members may include local probation officer, teacher or school administrator, juvenile court clinician, etc.
3. Who has/ should have standing to participate in hearing on a petition?
4. Who may/must prosecute once a petition is filed? This may be a conflict with the issues raised in question 2 above. On a CHINS adjudication hearing, who should act as the prosecutor? (Currently the Probation Officer usually acts as the prosecutor, but actually is a potential witness and the court should not be in the position to ask questions and prosecute the hearing.)
5. How can a court enforce conditions on a CHINS matter, if there is no authority to make an order that a child must follow any imposed conditions?
6. Appeal procedures, i.e. there is uncertainty as to which orders are final, when and how may they be appealed?
7. If we create a pre-court diversion system, how can we be sure not to cut off all access to judicial relief in the juvenile court should the pre-court system fail.