

To: Susan Maze-Rothstein
From: Mary Anne Padien
Date: 8-10-2006
Re: Proposal for Legal Skills in Social Context Program

I have provided more detail on Project Proposal number 1 below. After our conversation yesterday and further discussions with Susan Dillard at CPCS, I believe that Project Proposal number 2 is premature.

Please let me know if I can provide any further information or if you would like to meet with us.

BACKGROUND

The Chins reform effort being undertaken by Senator Spilka has involved a large group of stakeholders who have convened into a steering committee and subcommittees exploring problems identified during the public hearing on a bill to repeal the statute and the initial meetings of the task force of stakeholders. The issues covered by the subcommittees are: data collection (to establish as complete as possible an understanding of the population presenting as status offenders and their path through the judicial and human service system); 'front end' – to design a diversionary system that will provide services to children to enable them to avoid judicial proceedings; court process – to determine the need for changes to any and all procedural aspects of the system; research – to examine the statutory structure in other states regarding status offenses and to discover the programs which constitute the 'best practices' in communities in Massachusetts and other states for providing services to children to avoid court involvement or to achieve good outcomes after court intervention.

LEGISLATIVE TIMELINE

Senator Spilka expects to file legislation to amend the statute to implement the recommendations of the group in January. Because the issues currently being discussed are so fundamental to the existing system we are not certain that consensus will be reached on all details by the date established by legislative rules for bill filing. Therefore it is quite likely that the bill filed will be redrafted for presentation to the assigned committee and perhaps again after additional comment is received at a public hearing. Final enactment of a bill could happen anytime in the 2007-2008 session. Additionally, some portion of the changes proposed may be part of discussions and debate around the FY08 general appropriations bill in the spring of 2007.

If Northeastern were to accept this project, we anticipate that the class would evaluate the draft legislation, explore its likely effect on the existing system and propose refinements. It is possible that members of the class might participate in the public comment portion of

the legislative process, either by oral or written testimony. We expect that the task force will continue to meet and the class might participate in those meetings as well.

POTENTIAL ISSUES FOR RESEARCH AND ANALYSIS BY A NORTHEASTERN CLASS

- The existing statute (MGL chapter 119 sections 39E-39J) was adapted from a delinquency model and retains some of the procedural vestiges appropriate to a criminal setting like the standard of proof (beyond a reasonable doubt), a right to jury trial and the rules surrounding detention and bail. We need to understand better the effect and desirability of changes to these procedures.
- Recent SJC decisions have raised concerns about the right to counsel provisions. The statute contemplates that parents may lose custody of their child, yet only speaks to counsel for the child. Recent cases have discussed the parent-child relationship as possibly constitutionally protected, yet parents are not entitled to counsel and do not even have standing in some hearings. We need to understand the ramifications of changes in these areas.
- Children and families entering the CHINS system usually do so because other community and governmental institutions have not been able to assist them. The court is very helpful in bringing governmental agencies into the room to speak to the problem but does not have the authority to order services without first granting custody of the needy child to a state agency. Since access to services is key to helping the children before them, the ability to preserve families while guaranteeing assistance would be a desirable outcome of a statutory change. However the balance of power between the judicial and executive branches of government must be considered in any change we propose.
- One possible change is the provision of evaluation or services to children and families in some program outside of the judicial system. While this is likely to create some bar to access to judicial intervention it is important that we do not leave children, their families and their schools without access to the court when needed. In this regard the experience of other states that have similar structures would be informative.
- The status offender systems in Massachusetts and other states were created in response to federal funding changes in the 1960s and 1970s which required decriminalization of certain behaviors. For a variety of reasons the original policy goals for those changes were not met – or have not remained successful. In recent years some states have instituted changes in order to meet the same goal of providing services in community settings. We have begun looking at Illinois, Florida and New York and the recent changes they have made. We have looked at best practices in Wisconsin and would like to understand their statutory structure, but it is complex and we have not had the resources to do so.