

**TESTIMONY OF ERIK S. PITCHAL
IN SUPPORT OF S. 66,
“AN ACT REGARDING FAMILIES AND CHILDREN
ENGAGED IN SERVICES”**

March 29, 2011

Chairwoman Khan, Chairman Rodrigues, and Members of the Committee, I am pleased to appear before you today in support of this important legislation. My name is Erik Pitchal, and I am an assistant clinical professor of law at Suffolk University, where I founded and direct the child advocacy clinic.¹ I have spent my entire career writing, teaching, and litigating about child welfare and juvenile justice issues locally, nationally, and internationally. I have represented clients in the Massachusetts Juvenile Court, as well as many other courts. I offer a perspective that is based both on what I have seen in individual cases in the Massachusetts CHINS system as well as my broader understanding of issues relating to children and the law.

I wish to focus today on three basic ideas: the proper forum for handling cases involving misbehaving adolescents; the relative allocation of authority between the judiciary and the executive branch of government; and accountability in our child-serving systems. In each of these domains, our current CHINS system is failing, and for each area, S. 66 offers a solution.

What is the Proper Forum For Handling Cases Involving Misbehaving Adolescents?

The greatest problem with the existing system is that there are too many CHINS cases in court that shouldn't be there. Thus, the primary achievement of the bill from my point of view is that it removes from the legal system problems that are not really law based.

¹ Please note that I appear today in my personal capacity. I do not represent a client, and I do not speak for Suffolk University.

As the Committee knows, the Juvenile Court has jurisdiction over three types of cases: care and protection, delinquency, and CHINS. Care and protection cases are legal problems because the government is alleging that a parent has failed to provide the minimum standard of care under the law to their child, and the government is not legally permitted to intervene in families (absent their consent) without a court order. Delinquency cases are legal problems because children are accused of conduct which, if they were adults, would be considered violations of the law.

In contrast, CHINS cases, by definition, are status offenses -- conduct that is impermissible merely by dint of the child's status as a child. **Adolescence is a social condition, not a legal problem.** CHINS cases don't belong in a court unless we can really help it. The bill goes a long way towards diverting these matters away from court.

When Status Offense Cases Must Come Before the Court, What Authority Should the Court Have?

While I am confident that the bill will remove many cases from court that are more properly managed in the community, there will nevertheless be those occasions when the court does become involved, under the new regime of "FACES." For these cases, the bill fixes a second problem with the existing CHINS system: the impotence of the court to do much to help the families before it.

The bill gives the court real power. For the first time, in the FACES system the Juvenile Court will have the power to convene all the necessary parties to work out solutions for troubled families. The court will have the power to refer families for services -- services which EOHHS will be required to create. The court will have the power to recommend that DCF place

a child out-of-home and to direct DCF to provide specific services in specific cases. Under this legislation, DCF is required to give due consideration to the court's recommendations, and to explain in writing any time it chooses to deviate. That is a big change from the status quo.

In essence, the bill sets up the court as a problem solver, and the judge as a community leader who, in the forum of last resort, is actually equipped to diagnose and solve a family's entrenched problems. We have asked the court to do these things for too long without actually giving it the tools to do so effectively.

How Can We Be Assured That the New System is Working?

Despite its many advantages over the current CHINS system, the proposed FACES system will still be an uncomfortable fit for the court system, because of point I made earlier: these cases are not really legal problems in the strictest sense. The bill accommodates that discomfort by emphasizing data, study, and learning. The system is intentionally created to be flexible. It is designed from the outset to be reflective and to be responsive to progress (or lack thereof).

What the court is essentially doing in FACES is functioning as a provider of social services. (Frankly, it does this in the existing CHINS system, but not terribly well.) Thus, the bill creates the same expectations for courts (and Probation) as it creates for EOHHS. It creates the same expectations that society has now come to expect for most of government and for the provision of social services especially: **the work should be data driven, evidence based, and accountable to the public.** Regular reviews of how well the new system is working will be undertaken. Changes will be made to correct for lessons learned. The public will be kept

informed of the progress and the challenges that will inevitably continue in such a complex system.

For too long, our courts and Probation have operated in relative secrecy. When it comes to providing services to our most vulnerable children and families, we can do a lot more to ensure accountability in the system even as we continue to protect the privacy of individuals. It seems to me that this bill will help do that.

I am happy to answer any questions the Committee may have.