

Status offense systems like CHINS are designed to address the broader societal problem of children and families in crisis. In this regard we are failing children as a society. What used to be personal and family issues, are now in the realm of the courts.<sup>1</sup> Problems, such as those exhibited in the Massachusetts CHINS system, resulted.

CHINS is “widely viewed as not capable of achieving its original purpose – to provide care and services for children who are truant, runaways or exhibiting ‘difficult’ behaviors.”<sup>2</sup> 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.”<sup>3</sup> 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. 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.

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<sup>1</sup> 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.

<sup>2</sup> Children’s League of Massachusetts, *CHINS: A System in Need of Services*, available in hard copy.

<sup>3</sup> *Id.*

With the advent of the current reform in the State House, the goal of CHINS has since changed. In broad terms, the goal of the reform is to preserve families. 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.

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. Data shows that in 2005, there were 9,164 CHINS applications. Of these, 6,424 petitions were granted. Of those petitions, 3,603 were granted DSS custody in 2005 – this is 40 % of total CHINS applications for the year, a very high number of children removed from their families. 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. 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.<sup>4</sup> 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.

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

The Massachusetts CHINS law is not applied uniformly in the state. Though the procedure is specified in the statute,<sup>5</sup> 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.”<sup>6</sup> 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.

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<sup>5</sup> See Mass. Gen. Laws ch. 119 §§ 39E-39I.

<sup>6</sup> See Kilkelly, *supra* note 14, at 5.