

SENATE No. 00066

The Commonwealth of Massachusetts

PRESENTED BY:***Karen Spilka***

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regarding families and children engaged in services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>James Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Patricia Jehlen</i>	<i>Second Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Mark Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Susan Fargo</i>	<i>Third Middlesex</i>
<i>Jennifer Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Michael Moore</i>	<i>Second Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Chris Walsh,</i>	<i>6th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>

SENATE No. 00066

By Ms. Spilka, petition (accompanied by bill, Senate, No. 66) of Dykema, Flanagan, Fargo and other members of the General Court for legislation regarding families and children engaged in services [Joint Committee on Children, Families and Persons with Disabilities].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2329 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regarding families and children engaged in services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 AN ACT REGARDING FAMILIES AND CHILDREN ENGAGED IN SERVICES

2
3 SECTION 1.

4 Whereas families in the Commonwealth whose children are truant, runaway or acting
5 in a fashion that interferes with their parent's ability to adequately care for and protect said
6 children are families in crisis and often require the assistance of government agencies, including
7 schools, human service agencies and the courts, as well as non-governmental service providers;
8 and;

9 Whereas the issues facing said children and families are complex and the services
10 which would best assist such families are not always available from a single agency or
11 department of the Commonwealth; and

12 Whereas the collaboration among multiple public and private agencies and offices is
13 required to ensure that all children and families receive the services they need to succeed; and

14 Whereas services are not consistently available in all communities;

15 Therefore, it shall be the policy of the Commonwealth to develop a flexible, consistent, and
16 accountable system of community based programs to assist said children and families.

17 SECTION 2. The General Laws as appearing in the 2008 Official Edition are hereby
18 amended by adding after section 16S of chapter 6A the following new section:

19 Section 16T. Community based services for families and children

20
21 (a) It is the intent of the General Court to create an accountable, community-based
22 services network that provides consistent services throughout the Commonwealth to address the
23 needs of children requiring assistance and their families by providing them with an array of
24 resources. The goal of said system is to preserve and strengthen families while ensuring the
25 healthy behavioral, social and educational development of the child and to provide opportunities
26 to divert children from the juvenile justice and child protection systems. These services shall
27 focus on creating a stable environment and strengthening the family as a whole while
28 emphasizing parental responsibility. These services shall also focus on assisting children who are
29 at risk of dropping out of school.

Said community-based services network shall consist of a network of family resource centers where public and private providers will provide service coordination, referrals and services in the community as a timely response to children and families requiring assistance. The system shall include a mechanism for the collection and analysis of information which will enable the Commonwealth to evaluate the effectiveness of the network of family resource centers and to identify gaps in services. It is the intent of the General Court to reserve judicial intervention for those children and families who require services not available through the community based services network and family resource centers in order to stabilize the child and family and to achieve resolution of the crisis.

Nothing in this act is intended to diminish or interfere with the responsibility of the commonwealth or municipalities to provide educational services as required by state and federal law. The creation of said community based service network and family resource centers are subject to appropriation and services provided shall be limited by the availability of funds and third party reimbursement.

(b) For the purpose of this Section the following words shall have the following meanings:

“Child requiring assistance”, a child between the ages of 6 and 18 who (a) repeatedly runs away from the home of his parents, legal guardian, or custodian; (b) repeatedly fails to obey the lawful and reasonable commands of his parents, legal guardian, or custodian, thereby interfering with said parent’s, legal guardian’s, or custodian’s ability to adequately care for and protect said child; (c) repeatedly fails to obey the lawful and reasonable regulations of his school; or (d) who is habitually truant;

“Community-based services”, services, including coordination of services, that are designed to assist families with children requiring assistance so that, where appropriate, such children will be able to: (a) continue residing with their families in their home communities; (b) continue as students in their community schools; and (c) enjoy strengthened relationships with their families.

“Family with children requiring assistance”, the parents, guardians, custodian, siblings, and any other relatives or caretakers who are responsible for a child requiring assistance.

“Habitually truant”, a school-aged child not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school who fails to attend school for more than 8 school days in a quarter or 10 days in a school year;

“Secretary”, the secretary of the Executive Office of Health and Human Services.

(c) Subject to appropriation or third party reimbursement, the secretary shall:

(1) establish a network of child and family service programs and family resource centers throughout the Commonwealth to provide community-based services to families with children requiring assistance. The network of community-based services programs and family resource centers shall assist families so that whenever possible children will be able to continue residing with their families in their home communities; assist families to enable children to continue as students in their community schools; strengthen the relationships between children and families; and provide coordinated, comprehensive, community-based

72 services for children at risk of dropping out of school, committing delinquent acts, or engaging in
73 behaviors which impede the likelihood of their leading healthy, productive lives.

74 (2) develop guidelines and standards necessary to achieve and
75 maintain on a statewide basis a comprehensive and integrated network of community based
76 services and family resource centers for children and families.

77 (3) seek to promote efficiency and access to existing services in
78 establishing the network by including: organizations that are part of the comprehensive
79 community-based behavioral health delivery system coordinated by the secretary under section
80 16S; organizations that provide services or have experience in coordinating access to
81 community-based services such as local schools; other local public agencies, private
82 organizations, and medical, behavioral or mental health care providers. (4)

83 coordinate the services provided by the network and in the family resource centers which
84 may include outreach, intake, screening, assessment and referral to services. Services offered
85 through the network shall include, but are not limited to treatment for or assistance with:
86 eligibility determinations, behavioral, medical, and mental health needs, special education
87 evaluation, remedial education services, assistance with insurance issues, mentoring, family and
88 parent support, civic engagement and community service, after school and out-of-school
89 opportunities, residential programs, crisis management and case management. The secretary
90 shall encourage cooperation among local providers as needed to provide the full complement of
91 services required under this section.

92 (5) monitor and provide technical assistance to family resource
93 centers and providers of community based services.

(6) require the use of a standard intake screening and assessment tool to evaluate all families and children seeking community based services which shall identify the family's strengths, resources and service needs such as mental health, behavioral health or substance abuse treatment, basic family shelter, clothing and food needs, child care needs, health insurance status, legal issues, education placement and child protection. (7)

create a data collection system for use by programs within the community based services network and family resource centers which maintains the privacy of clients served, assists programs and the secretary in addressing the needs of the population to be served, collects information related to, among other things, the insurance status and benefit coverage of clients served, income documentation as needed to apply a sliding fee scale for payment or waiver of payment for services, and other information that may assist the program and the secretary in providing services, identifying service needs and gaps, and evaluating the effectiveness of the family resource centers and the community based services network.

(d) Any documentation of services provided to the family and child through the network of community based services or at the family resource centers shall not be public records. Except as otherwise required by law, including laws related to the reporting of suspected abuse or neglect under section 51A of chapter 119, statements made by the family and child while receiving services from the network of community based services shall be treated as confidential and may not be used in any proceedings without the written consent of the person making the statement. Information about the child and family requiring assistance, including interactions with service providers and protected health information services, may be shared among providers of community services providing such services to the child and family as well

as with any agency within the executive office of health and human services providing services to the child as needed to coordinate treatment and provide appropriate case management. Notwithstanding any general or special law to the contrary, information about the child and family, including interactions with service providers and protected health information services, may be shared among members of the case team as needed to coordinate treatment and provide appropriate case management, to the extent permitted under applicable federal law, unless the child or family decline in writing to permit such information sharing.

(e) Participation in community based services and use of the family resource centers shall be pursuant to a voluntary agreement of the parent, legal guardian, or custodian and the child; provided however that provision of community based services shall be contingent upon parents, legal guardians and custodians granting consent to allow covered services to be billed to the insurance providers.

(f) Except as provided herein, a school administrator shall refer a child to a family resource center or a communitybased services program at the same time that the administrator notifies the student and his parent, legal guardian, or custodian that the student will be expelled for failure to comply with the lawful and reasonable rules of the school. After providing the process that is due the student, including an expulsion hearing if requested under section 37H of chapter 71, the school administrator shall consider the outcome of the community-based services if the student provides that information to the school. When a school administrator refers a child for habitually truant behavior, it must be shown that the school, child, and family have completed

a department of education certified truancy program, if such a program is available at the school. Whenever a child or family seeks assistance from a family resource center or community based service network program for habitually truant behavior, the program staff shall assist the family in gaining access to the child's school's certified truancy program.

SECTION 3. Chapter 69 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding after section 1N the following new section:-

Section 1O. The department of elementary and secondary education shall promulgate regulations establishing a truancy prevention program certification process. The regulations shall be consistent with the schools and behavioral health framework developed by the department under section 19 of chapter 321 of the acts of 2008 and shall include requirements that the truancy prevention program evaluate the level of out-of-school support for students and families, and address the conditions that may make students more likely to become truant, including previously unidentified or inadequately addressed special needs, bullying and harassment. School districts shall establish a truancy prevention program which meets the requirements for certification by the department.

SECTION 4. Section 21 of Chapter 119 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking lines 8 to 16 and inserting in place thereof the following:-

"Child requiring assistance", a child between the ages of 6 and 18 who (a) repeatedly runs away from the home of his parents or legal guardian; (b) repeatedly fails to obey the lawful and reasonable commands of his parents or legal guardian, thereby interfering with said parent's or

161 legal guardian's ability to adequately care for and protect said child; (c) repeatedly fails to obey
162 the lawful and reasonable regulations of his school; (d) who is a habitual truant;

163 SECTION 5. Section 21 of Chapter 119 of the General Law, as appearing in the 2008
164 Official Edition, is hereby amended by adding the following definitions:

165 "Family requiring assistance", the parents, guardians, siblings and any other relatives or
166 caretakers responsible for a school aged child who needs assistance.;

167 "Habitual truant", a school-aged child, not otherwise excused from attendance in accordance
168 with the lawful and reasonable regulations of his school, who willfully fails to attend school for
169 more than 8 school days in a quarter or 10 days in a year;

170
171 SECTION 6. Section 21 of Chapter 119 of the General Laws, as appearing in the 2008
172 Official Edition, is hereby amended at line 54 by inserting at the end thereof the following
173 sentence:

174 For purposes of sections 39L through 39Y exclusive the word "Parent", includes a legal guardian
175 or other person legally responsible for a child's care.

176
177 SECTION 7. Chapter 119 of the General Laws is hereby amended by striking out sections 39E to
178 39J, inclusive, and inserting in place thereof the following new sections:

179 Section 39K. Jurisdiction

The juvenile court department has original and exclusive jurisdiction over any proceeding commenced under section 39M alleging that a child and his family requires assistance. The jurisdiction of the Boston juvenile court for the subject matter of this section shall extend to the territorial limits of Suffolk County.

Section 39L. Nature of the Proceedings

(a) Proceedings under sections 39K to 39Y, inclusive, shall not be deemed criminal proceedings and any record of these proceedings, including the filing of a request for assistance and creation of a docket, shall not be entered in the criminal offender record information system.

(b) Notwithstanding any general or special law to the contrary, no record pertaining to the child involved in the proceedings shall be maintained or remain active after the request for assistance is dismissed. The identity and record of any child for which a request for assistance is filed shall not be submitted to the criminal history systems board, criminal offender record information system, court activity record index or any other criminal record information system.

(c) Proceedings under sections 39K to 39Y, inclusive, shall be confidential and not be open to the public.

Section 39M. Request for Assistance

(a) A proceeding to determine whether or not a child and his family requires assistance is originated by the filing of a request for assistance, stating the petitioner's information and belief :

(1) that the child repeatedly runs away from the home of his parents or legal guardian or repeatedly fails to obey the lawful and reasonable commands of his parents thereby resulting in said parent's inability to adequately care for and protect said child, or that the child

repeatedly fails to obey the lawful and reasonable regulations of his school or is habitually
truant;

(2) that the child was under the age of 18 at the time the specified acts took
place;

(3) specific acts on which the request for assistance is based and the time and
place they are believed to have occurred;

(4) that the child and his family require assistance;

(5) when the petitioner is a school district, the request for assistance shall
additionally include the following:

(i) if the request for assistance states that a child is habitually
truant, a statement of the actions taken by the school district to comply with its obligations under
its truancy prevention program certified pursuant to section 10 of chapter 69 and to improve the
school attendance of the child. The request for assistance shall also state whether or not the child
and his family have participated in the truancy prevention program and a statement of the
specific steps taken under the truancy prevention program to prevent the child's truancy; and

(ii) if the request for assistance states that a child has
repeatedly failed to obey the lawful and reasonable regulations of the school, a statement of the
specific steps taken by the school to improve the child's conduct;

(6) when the petitioner is a parent, the request for assistance shall
additionally include documentation that the family was informed of and referred to a
community-based services program or family resource center under section 16T of chapter 6A.

(b) The following persons may originate a proceeding under this section:

(1) a police officer;

(2) a parent;

(3) a school district, but only if the request states that the child repeatedly fails to obey the lawful and reasonable regulations of his school or is habitually truant;

(c) (1) When a request for assistance is presented to the clerk for filing the clerk shall consult with a department of children and families court liaison to determine whether or not the child and family named in the petition have received services from a community service program or family service center created under section 16T of chapter 6A. If the child and family have participated in such services, the clerk shall attach to the request a statement of the petitioner that identifies the family resource center or community based services program that provided assistance. If the child and family have not participated in such services the clerk shall inform the petitioner that they may delay filing the request for assistance and that the petitioner may chose to first refer the child and his family to the family resource center or community based services program designated by the secretary of the executive office of health and human services to provide community-based services in the juvenile court district where the child resides and at a later time return to court and file a request for assistance if needed.

(2) (i) If the petitioner is a parent, the clerk shall offer to contact the department of children and families court liaison or the family resource center or community based services program designated by the secretary of the executive office of health and human services on the parent's behalf in order to complete a referral to such family resource center or community based services program. If the parent declines to be referred to such center or

244 program, the clerk shall provide to the parent informational materials prepared by the court
245 which explain the nature of services available through the court process, the manner in which
246 those services will be delivered, the nature of the orders which the court may issue and the
247 possibility of changes in the custody of the child. The clerk may then accept the request for
248 assistance for filing and attach to it the parent's signed statement that the parent does not wish to
249 be referred to such services and that the parent understands the nature of services available
250 through the court process, the manner in which those services will be delivered, the nature of the
251 orders which the court may issue and the possibility of changes in the custody of the child.

252 (ii) If the petitioner is a police officer, the clerk shall offer to
253 contact department of children and families court liaison or the family resource center or
254 community based services program designated by the secretary of the executive office of health
255 and human services in order to complete a referral to such services. The clerk may accept a
256 written statement of the reasons for the officer's belief that the referral to community-based
257 services prior to filing the request for assistance would present a risk of harm to the child. The
258 clerk shall then (A) immediately contact the department of children and families court liaison
259 and the designated family resource center or community based services program to provide
260 notice that a request for assistance has been prepared for filing, (B) create a docket for the matter
261 and (C) request that the chief probation officer, or his designee, conduct an immediate inquiry
262 and report to the clerk, or a judge if the clerk is not available with advice on how to proceed to
263 obtain assistance for the child. After considering such advice the clerk may accept the request
264 for assistance for filing.

(a) Except as provided in subsection (b), upon the filing of a request for assistance pursuant to this section, the court shall cause a copy of the request for assistance and a summons to be issued, requiring the child and each parent, to appear at the court at a time and place named to address the request for assistance. Where the safety and wellbeing of the child or other parent is in danger, only the primary custodial parent shall be required to appear.

(b) In proceedings commenced by a parent, the court shall, at the time the request is filed, notify the parent in writing of the time and place that the request for assistance will be heard to ensure the parent has a copy of the request for assistance. If the parents are not living together, the court shall cause a copy of the request for assistance and a summons to be issued, requiring the child and the parent who did not initiate the request for assistance to appear to address the request for assistance at the court at a time and place named, except in cases where the safety and wellbeing of the child or other parent is in danger, then only the primary custodial parent shall attend.

(c) A copy of the request for assistance served or provided under subsection (a) or (b) shall be accompanied by a notice that, in the event that the court deems it necessary to place the child in the care and custody of the department of children and families, said parent may be named as a respondent in any child support proceeding brought in connection with the child's care.

(d) Unless service of the summons required by this section is waived in writing, such summons shall be served by a constable or police officer, either by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at

the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

Section 39O. Determination of probable cause that a child and family require assistance; Expungement.

Whenever a request for assistance is filed, the clerk, or a judge if the clerk is not available, shall hold a hearing as soon as possible, but not later than 15 days after the creation of a docket. At that hearing the clerk, or a judge if the clerk is not available, shall receive the recommendation of the probation officer and receive evidence from the petitioner and the child. The clerk, or the judge shall determine (i) whether or not there is probable cause for a determination that a child and family are in need of assistance and (ii) whether it is in the best interest of the child for the matter to proceed to a fact finding hearing. The clerk or judge shall then either i) dismiss the request for assistance, or (ii) create a docket for the matter, unless a docket has already been created under section 39M(b), and refer the child and family to a probation officer for the preliminary inquiry under section 39R. When a request for assistance is dismissed under this section, the court shall enter an order directing the expungement of any records of the claimant maintained by the clerk, the court, the criminal history systems board, the court activity record index, and the probation department that directly pertain to the request for assistance.

Section 39P. Scheduling the Fact Finding Hearing

At the conclusion of the probable cause hearing required by section 39O, the clerk shall set a date for a fact finding hearing no more than 90 days from the date the request for assistance was filed. The court may postpone the fact finding hearing upon the request of the

parents, child, petitioner or probation officer for an additional 90 days after the expiration of the initial 90 day period.

Section 39Q. Appointment of Counsel

(a) When the request for assistance is filed the child shall be informed that he has a right to counsel at all hearings. At the time the request for assistance is filed, that court shall ensure that if said child is not able to retain counsel, the court shall at that time appoint counsel for said child. The clerk shall cause a copy of the request for assistance and notice of the time and place of the fact finding hearing to be delivered to counsel at the time of appointment.

(b) When the request for assistance is filed, each parent or legal guardian of the child shall be informed that he has the right to participate as a party in any proceeding under sections 39K to 39Y involving his child and that he has the right to counsel at any hearing or proceeding regarding custody of his child. If said parent or legal guardian is financially unable to retain counsel, the court shall appoint counsel for said parent or legal guardian.

(c) The court shall determine whether the parent or legal guardian of a child alleged to require assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the court shall assess up to a \$1000 fee against the parent or legal guardian to pay for the cost of counsel appointed for the child. If the parent or legal guardian is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent or legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child or for the parent.

Section 39R. Preliminary Inquiry by Probation

(a) When requested by the court or a clerk, the chief probation officer or his designee shall conduct a preliminary inquiry to determine whether in his opinion the best interests of the child and family require that crisis intervention services be provided to the child and family.

The probation officer in his discretion may:

(1) refer the family and child to a community-based services program in the community where the child resides;

(2) confer with the family resource center or any provider of community-based services;

(3) refer the child to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services;

(4) conduct conferences with the child, the child's family and the petitioner for the purpose of finding ways to resolve the situation which formed the basis of the request for assistance. Information obtained by the probation officer may be used in the present proceeding but it is otherwise confidential and may not be used in school disciplinary proceedings or other court proceedings.

(b) If the child or his parents fail to participate in good faith with the referrals or conferences arranged by the probation officer or if the probation officer is not able to refer the child or his parents to an appropriate public or private organization which is willing and able to provide appropriate services, the probation officer shall so certify in writing and present these findings to the clerk or judge.

(c) (1) The commissioner of probation shall establish a system to collect data on

all requests for assistance made and how they are resolved under sections 39K through 39Y.

Said system shall maintain the privacy of clients served, assist the court in addressing the needs

of the population to be served and collect information related to: the racial and ethnic identity of

the child; the insurance status and coverage of clients served; the length of time a child is

receiving assistance from a probation officer, including the time prior to and subsequent to the

filing of a request for assistance; the identity of any public or private organization to whom a

probation officer has referred a child or family for services; and any other information that may

assist the commissioner and the court in evaluating the availability and effectiveness of services

for children who are the subjects of requests for assistance pursuant to this section.

(2) The probation officer shall gather information concerning each child and

family referred to the officer which in both substance and format is compatible with and

complementary to the information gathered by the family resource centers and programs

providing community-based services pursuant to section 16T of chapter 6A, including but not

limited to the insurance status and coverage and other information that may assist the

commissioner of probation and the court in evaluating the availability and effectiveness of

services for children who are the subjects of requests for assistance pursuant to this section.

(3) The commissioner of probation shall report annually to the child

advocate, the Families and Children Engaged in Services advisory board, the house and senate

committees on ways and means, joint committee on children, families and persons with

disabilities and the joint committee on the judiciary on the assistance provided by probation

officers to children and families under Sections 39K to 39Y. The report shall be filed on October

1 of each year and shall include for each juvenile court district: the number of children and

families receiving assistance; their racial and ethnic identity, as identified by the child and family members; an analysis of the services provided and an identification of gaps in services available; the status or resolution of each request for assistance filed in the previous year; and the numbers of children who are the subject of a request for assistance and also charged with a delinquency matter in the previous year. The report shall exclude information that identifies or allows others to identify any child or family who is the subject of a request for assistance.

Section 39S. Custody, Failure to Appear

If, after an evidentiary hearing, the court finds by a preponderance of the evidence that a child stated to require assistance by reason of repeatedly running away from the home of his parents or legal guardian or repeatedly failing to obey the lawful and reasonable commands of his parent, is likely not to appear at the fact finding hearing or at the disposition hearing, the court may order the child to be released upon such terms and conditions as it determines to be reasonable or may place the child in the temporary custody of the department of children and families. The court may not order the child to be placed in the custody of the department of youth services. Prior to the court granting temporary custody to the department of children and families, the court must make a written certification and determination that it is contrary to the welfare of the child to be in his home, and that the department of children and families has made reasonable efforts to prevent removal of the child from his home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of the preventative services as an alternative to removal.

An order placing a child with the department under this section shall be valid for no more than 15 days, upon which the child and his parents, both represented by counsel, must be

brought again before the court for a hearing on whether the order should be continued for another 15 day period. If the court decides to extend the order, it shall note in writing the detailed reasons for its decision. Orders under this section may be in effect for no more than 45 days total.

A child who is the subject of a request for assistance may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under Sections 39K through 39Y, inclusive. A child who is the subject of a request for assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent. However, such child may be placed in a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

Section 39T. Withdrawal of Request for Assistance

The petitioner may, withdraw the request for assistance at any time prior to a hearing to determine the disposition of a request for assistance. A probation officer may at any time recommend to the court that the request for assistance be dismissed upon a showing that dismissal is in the best interests of the child.

Section 39U. Fact Finding Hearing

(a) The court shall hold a fact finding hearing in which it shall receive evidence from the petitioner, the parent, the child, a representative from the family resource center or community based services program, if involved with the family, and the probation officer. At any hearing held to determine whether a child and family require assistance, the child and his attorney shall be present and the parents or legal guardian shall be given an opportunity to be heard. The

petitioner who files the request for assistance shall bear the burden of presenting evidence proving beyond a reasonable doubt that the child and family require assistance.

(b) Following a fact finding hearing the court shall either:

(1) dismiss the request for assistance because the circumstances which led to the filing of a request for assistance have been resolved or the court finds that the child and family will not benefit from the assistance being offered;

(2) adjourn the hearing for up to 60 days because it finds that the interests of the child would best be served by continued informal assistance, in which case the court shall, with the consent of the child and his parent, refer the child to a probation officer or refer the child and family to the designated family resource center or community based services program for additional assistance; or

(3) If the court finds the statements included in the request for assistance have been proved at the fact finding hearing beyond a reasonable doubt, it may find that the child and family named in such request for assistance to be a child and family requiring assistance and schedule a hearing for disposition.

(c). No statements made by a child, family member, or by any other person during the period of inquiries, conferences, or referrals may be admitted at any hearing, provided that the child or a family member who made the statement may consent in writing to admitting such a statement.

Section 39V. Disposition Conference and Hearing

437 (a). Upon making a finding that a child requires assistance after a fact finding hearing, the
438 court shall convene and may participate in a conference of the probation officer who conducted
439 the preliminary inquiry, a representative from the family resource center or other community
440 based services program, if involved with the family, the petitioner, a representative from the
441 child's school, the child's parent and his attorney, the child and his attorney, a representative of
442 the department of children and families, if involved with the family, and any other person who
443 may be helpful in determining the most effective assistance available to be offered to the child
444 and family. The probation officer shall present written recommendations and other persons at
445 the conference may present written recommendations to the court to advise the court on
446 appropriate treatment and services for the child and family, appropriate placement for the child,
447 and appropriate conditions and limitations of such placement.

448 At the conference and subsequent hearing on disposition, the child and his attorney shall
449 be present and the parents or legal guardian and the petitioner shall be given an opportunity to be
450 heard. The court may receive evidence as to the best disposition from all persons who
451 participate in the conference and any other person who may be helpful in determining an
452 appropriate disposition.

453 (b). The court shall then conduct a dispositional hearing. The court, taking into
454 consideration the evidence admitted at the hearing, the report of the probation officer, and the
455 physical and emotional welfare of the child, may make any of the following orders of
456 disposition:

457 (1) subject to any conditions and limitations the court may prescribe,
458 including: provisions for medical, psychological, psychiatric, educational, occupational and

social services; and for supervision by a court clinic or by any public or private organization providing counseling or guidance; and for any other services deemed appropriate by the court, permit the child to remain with his parents;

(2) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for services deemed appropriate by the court, including but not limited to services described in clause (1), place the child in the care of any of the following:

(i) a relative, or other adult individual who, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; or

(ii) a private charitable or childcare agency or other private organization, licensed or otherwise authorized by law to receive and provide care for such children;

(3) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, place the child in the custody of the department of children and families. If the court chooses to place the child in the custody of the department then at the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. When the court has placed a child in the custody of the department, then the department:

(i) may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C;

(ii) may not refuse out of home placement when requested by the child if there is a substantiated history of abuse or neglect in the home by the parent or legal guardian or any other person living in the home;

(iii) subject to clauses (i) and (ii), shall direct the type and length of such out-of-home placement;

(iv) subject to clauses (i) and (ii), shall give due consideration to the recommendations of the court. Whenever the department decides not to carry out the recommendations of the court regarding placement and treatment of the child it shall present the reasons for its decision and the alternative plan for treatment and placement in writing to the court.

(4) The court may issue an order directing any state agency to provide particular services to the family and child including but not limited to those services described in clause (b)(1). If the agency is not able to comply with the order directing services then the agency shall provide to the court a written statement of the reasons why it is unable to provide those services. A copy of the statement shall be sent to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities and the office of the child advocate.

(5) Where the family or child are directed by the court to participate in treatment or services which are eligible for coverage by an insurance plan under section 22 of chapter 32A, section 10F of chapter 118E, section 47B of chapter 175, section 8A of chapter 176A, or section 4A of chapter Ch.176B Sec.4A, payment for such services shall not be denied if the treatment or services otherwise meet the criteria for health plan coverage.

Section 39W. Prohibition on placements with the department of youth services or in locked facilities

(a) Notwithstanding the provisions of subsection (b)2(ii) of section 39V, the court may not order the child to be placed in the custody of the department of youth services.

(b) A child found to require assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent. However, such child may be placed in a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

Section 39X. Duration of Assistance

(a) Any order of disposition under Section 39V shall continue in force for not more than 120 days; provided, however, that the court which entered the order may, after a hearing, extend its duration for up to three additional periods, each such period not to exceed 90 days, if the court finds that the purposes of the order have not been accomplished and that such extension would be reasonably likely to further those purposes. The child and parents shall have the opportunity to present evidence and rebut evidence presented at any extension hearing.

(b) No order shall continue in effect after the nineteenth birthday of a child named in a request for assistance.

Section 39Y. Custodial Protection

(a) (1) A child may be taken into custodial protection for engaging in the behaviors described in section 39M, only if such child has failed to obey a summons issued

pursuant to section 39N, or if the law enforcement officer initiating limited custody has probable cause to believe that such child has run away from the home of his parents or legal guardian and will not respond to a summons.

(2) After an officer has taken a child into custodial protection, the officer shall immediately notify the parent or other person legally responsible for the child's care, or the person with whom he is domiciled, that he is under the custodial protection of the officer.

(3) After making every reasonable effort to give notice under paragraph (2), the officer shall:

(i) release the child to the custody of his or her parent or other person legally responsible for his or her care upon the written promise, without surety, of the person to whose custody the child is released that he will bring the child to the court on the next court date ; or

(ii) forthwith and with all reasonable speed take the child directly, and without first being taken to the police station house, to the program designated to provide community-based services for the geographic region which constitutes the district of the juvenile court department within which the child was taken into custodial protection or in which the child resides; or

(iii) release the child to a representative of the department of children and families, if the law enforcement officer has reason to believe that the child is or has been in the care or custody of such department; or

(iv) take the child directly to the juvenile court in which the act occasioning the taking into custodial protection occurred, provided that the officer affirms on the record that he attempted to exercise the options identified in paragraphs (i), (ii), and (iii) of this subsection, was unable to exercise these options, and the reasons therefore.

(4) In the absence of special circumstances, the officer shall release the child to his parents or other person legally responsible for his care in accordance with paragraph (3)(i).

(5) A child may not be securely detained in a police station or town lockup. At no time shall a child be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent. However, such child may be placed in a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

(6) Notwithstanding the foregoing requirements for placement, any such child who has been taken into custodial protection shall, if necessary, be taken to a medical facility for treatment or observation.

SECTION 8. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 3 of the first paragraph, the word "sixteen" and inserting in place thereof the following word:-
eighteen.

SECTION 9. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 4 of the second paragraph, the word "sixteen" and inserting in place thereof the following word:- eighteen

SECTION 10. Subject to appropriation, the department of elementary and secondary education shall pilot a truancy prevention program using a restorative justice format in at least one urban high school in the Commonwealth. The program shall include the use of healing circles which allow family, neighborhood and school community members to be present; a reparative board, comprised of peers and led by an adult; family group counseling, and mediation or alternative dispute resolution with the child, family members and school representatives. The program shall be designed to address the underlying causes both in and out of school which led to truancy. The program shall be consistent with and organized according to the schools and behavioral health framework developed by the department under section 19 of chapter 321 of the acts of 2008. The department shall evaluate the effectiveness of the program in preventing truancy and enhancing the child's academic performance and report the results of that evaluation to the board of elementary and secondary education, the house and senate committees on ways and means, joint committee on education, the department of elementary and secondary education and the child advocate.

SECTION 11. Subject to appropriation, the secretary of the executive office of health and human services shall pilot a program to address the unique needs of girls who run away from their parents and legal guardians.

585

586 SECTION 12. Within 12 months of the effective date of this act, the Commissioner of
587 Probation shall submit a report to the child advocate, the Families and Children Engaged in
588 Services advisory board, the house and senate committees on ways and means, joint committee
589 on children, families and persons with disabilities and the joint committee on the judiciary. The
590 report shall include for each juvenile court district: the number of children and families
591 receiving assistance from probation officers; the racial and ethnic identity of the children and
592 families, as identified by the child and family members; an analysis of the services provided and
593 an identification of gaps in services available; the status or resolution of each request for
594 assistance filed under section 39M of chapter 119; the number of children who are the subject of
595 a request for assistance and also charged with a delinquency matter in the previous year; and the
596 custody status of the child that is subject to the request for assistance, specifying if the child is in
597 the custody of the department of children and families or committed to the care of the
598 department of youth services. The report shall exclude information that identifies or allows
599 others to identify any child or family involved in the juvenile justice system.

600 Advisory board to guide implementation and monitor the new system

601 SECTION 13. (a) There shall be established within the executive office of health and
602 human services but not subject to the control of said executive office a Families and Children
603 Requiring Assistance Advisory Board, hereinafter called the advisory board. The advisory board
604 shall consist of the following members: 4 representatives of the executive office of health and
605 human services appointed by the secretary, one of whom shall be a representative of the
606 department of children and families, one of whom shall be a representative of the department of

607 youth services, one of whom shall be a representative of the department of mental health, one of
608 whom shall be a representative of the office of Medicaid; the child advocate or her designee; a
609 representative of the department of elementary and secondary education, appointed by the
610 commissioner; a juvenile court judge appointed by the chief justice of the juvenile court; a
611 probation officer assigned to a juvenile court, appointed by the commissioner of probation; 5
612 members appointed by the Governor, one of whom shall be a district attorney, one of whom shall
613 be a designee of the committee for public counsel services, one of whom shall be an independent
614 education advocate, one of whom shall be a private provider of services to families with children
615 who have behavioral health needs, and one who is a parent and is not an employee of the
616 commonwealth; one member appointed by the Speaker of the House and one member appointed
617 by the President of the Senate.

618 The secretary of health and human services and the chief justice of the juvenile court shall each
619 designate one board member to serve as co-chairs. All appointments to the advisory board shall
620 be made not later than thirty days after the effective date of this section. Any vacancy shall be
621 filled by the appointing authority. The chairpersons of the board shall schedule the first meeting
622 of the advisory board, which shall be held not later than sixty days after the effective date of this
623 section.

624 (b) The advisory board shall (1) monitor the progress being made by the executive
625 office of health and human services in developing a community based services network and
626 family resource centers under section 16T of chapter 6A; (2) monitor the progress being made
627 by the probation department in developing a system to collect data regarding requests for
628 assistance made and how they are resolved as required by section 39R of chapter 119; (3)
629 monitor the effectiveness of the juvenile court in providing assistance to children and families

who file or are the subjects of requests for assistance under sections 39K through 39Y of chapter 119; (4) provide advice with respect to such implementation upon the request of the chief justice of the juvenile court, the commissioner of probation, the secretary of health and human services or the general court and make recommendations to the governor annually whether there are sufficient resources and support to continue with the activities identified in section 16T of chapter 6A and sections 39K through 39Y of chapter 119.

(c) The secretary of the executive office of health and human services, the commissioner of department of elementary and secondary education, the commissioner of probation, and the chief justice of the juvenile court shall provide to the advisory board periodic data reports which include information about families and children seeking or referred for assistance and services provided. Within 12 months of the effective date of this act the advisory board shall submit recommendations to the governor for funding and implementation activities based on the review of the data submitted.

(d) The Families and Children Requiring Assistance Advisory Board shall annually, not later than January 30th of each year, report in writing to the governor, the child advocate, the house and senate committees on ways and means, and the joint committees on children and families and persons with disabilities and on the judiciary on the progress made on the implementation of section 16T of chapter 6A and sections 39K through 39Y of chapter 119. In each annual report the advisory board shall report its expectation of progress toward the goals of section 16T of chapter 6A which will be achieved in the following year. The annual report shall also contain a recommended budget for the continued implementation activities to be undertaken in the following year. The board will make a final report on the implementation of section 16T of chapter 6A and sections 39K through 39Y of chapter 119 together with any recommendations

for legislative and regulatory changes not later than January 30, 2016. The report shall be public.
The board shall terminate following submission of the final report.

SECTION 14. (a) Within 24 months of the effective date of this act, the secretary of the executive office of health and human services shall, with the advice of the advisory board established in SECTION 13 of this act, design a model for the delivery of community based services for children requiring assistance which shall include family resource centers and will augment, be compatible with and integrated with existing community-based service systems for children, as required by SECTION 2 of this act. Said model shall include a system to gather data including: demographic information, insurance status and benefit coverage of clients served, income documentation as needed to apply a sliding fee scale for payment or waiver of payment for services, and other information that may assist the program and the secretary in providing services and evaluating the effectiveness of family resource centers and community based services programs, as required by SECTION 2 of this act. The model shall allow a child or family to seek assistance from a family resource center or community based services program directly and without referral. The model shall include procedures for referral to other services whenever the staff of the family resource center or program offering community based services determines that a family seeking or referred for services for a child has significant and complex medical needs which cannot be met by the agency or where the child's behavior presents a significant risk of harm that cannot be safely managed in the community.

(b) The advisory board will review the model design and make recommendations to the secretary for pilot programs including recommendations of whether there is sufficient information, workforce, and funding available to prepare and implement a pilot program.

(c) Subject to appropriation, within 36 months of the effective date of this act, the secretary shall pilot family resource centers or a community based service system program in one or more geographic regions of the commonwealth. The secretary, with the advice and assistance of the advisory board shall analyze the effectiveness of these pilot sites in order to make necessary changes to the program design in establishing network of family resource centers and community based service programs throughout the commonwealth.

(d) Subject to appropriation, within 48 months of the effective date of this act, the secretary shall establish a network of family resource centers and child and family service programs throughout the Commonwealth to provide community-based services to families with children requiring assistance, as required by section 16T of Chapter 16A.

(e) Within 30 days of the effective date of this act the commissioner of the department of children and families shall designate one or more employees of the department to liaise with the juvenile court and its clerks and judges and probation officers in order to coordinate access to the resources of the department including but not limited to family resource centers and community based services.

SECTION 15

The department of mental health, in collaboration with the department of youth services and the department of public health shall conduct a comprehensive review of the mental health and substance abuse service needs of adolescents in the care of or detained in the commonwealth

695 through the order of a juvenile court, including without limitation juveniles detained in the
696 department of youth services or in the custody of the department of children and families or
697 receiving services from the department of mental health, the court clinics, probation or otherwise
698 and including without limitation any such departments, offices, agencies or instrumentalities of
699 the commonwealth, and any private organizations or agencies operating under arrangement with
700 departments or agencies of the commonwealth. To complete said review the department of
701 mental health, the department of youth services, and the department of public health shall solicit
702 input from the office of probation, the department of children and families , the department of
703 elementary and secondary education, the juvenile court, the juvenile court clinics, the committee
704 for public counsel services, the department of mental retardation, the division of insurance,, the
705 division of medical assistance, the Massachusetts Association of District Attorneys, at least one
706 individual representing the interests of parents and families, at least one advocate for juvenile
707 justice, at least one representative of the service provider community, and at least one
708 representative of the Massachusetts Association of Health Plans. Said review shall be for
709 purposes of identifying the following:

- 710 (i) existing and proposed models of alternatives to detention, within and outside the
711 commonwealth, of providing mental health and substance abuse services to
712 juveniles in detention, and as alternatives to detention; community resources and
713 other dependencies which affect the appropriateness and effectiveness of models
714 of alternatives to detention; and data demonstrating the relative efficacy, cost –
715 effectiveness, and effect on public safety of alternative models;
- 716 (ii) unmet mental health and substance abuse needs of juveniles within the juvenile
717 court systems of the commonwealth, including an explicit comparison of the best

718 practices and models identified in paragraph a of this section with services and
719 models available in the commonwealth;

720 (iii) recommendations for addressing unmet needs, including without limitation
721 through the court clinics of the juvenile courts, and through contracting by the
722 department of mental health for community based services through community
723 providers, or through consortia of community providers, local government
724 agencies and others operating in congruence with local courts involved in the
725 juvenile justice system.

726 (b) within 60 days after the effective date of this act, the department shall post to its external
727 website, for 30 days public comment, a proposed work plan to gather information necessary to
728 prepare the report required by this section, in consultation with clinical, philanthropic and
729 advocacy organizations for children, and providers of mental health and substance abuse services
730 for minors. The proposed work plan shall be directed to submit a final report to the legislature
731 and the governor no later than 270 days after the effective date of this act.

732 (c) Within 90 days after the effective date of this act, the department shall post its final work plan
733 on its external website.

734 (d) Within 210 days after the effective date of this act, the department shall post on its external
735 website, for public comment, a draft report responsive to this section.

736 (e) Within 270 days after the effective date of this act, the department shall post on its external
737 website, a final report responsive to this section, including a summary of all public comments
738 received, and responses to such comments. The department shall also that day provide a copy to
739 the governor, the president of the senate, the speaker of the house of representatives, the chairs of

740 the joint committees of mental health and substance abuse, and children, families and persons
741 with disabilities and the legislative mental health caucus.

742