

**SENATE . . . . . No. 68**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Karen E. 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:
Karen E. Spilka	Second Middlesex and Norfolk
Paul J. Donato	35th Middlesex
Richard T. Moore	Worcester and Norfolk
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Susan C. Tucker	Second Essex and Middlesex
Tom Sannicandro	7th Middlesex
David P. Linsky	5th Middlesex
Benjamin Swan	11th Hampden
Ellen Story	3rd Hampshire
Joyce A. Spiliotis	12th Essex
Kay Khan	11th Middlesex
Cleon H. Turner	1st Barnstable
Mark C. Montigny	Second Bristol and Plymouth
Thomas A. Golden, Jr.	16th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S02570 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### 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 SECTION 1. The General Laws as appearing in the 2006 official edition are hereby amended by  
2 adding after chapter 6A section 16G the following new section:

3 Section 16H. Community-based services for families and children

4 1. *Whereas* families in the Commonwealth whose children are truant, runaway and acting in a  
5 fashion that interferes with their parent's ability to adequately care for and protect said children  
6 are families in crisis; and

7 *Whereas* the issues facing said children and families are complex and the services which would  
8 best assist such families are not always available from a single agency or department of the  
9 Commonwealth and the collaboration among multiple public and private agencies and offices is  
10 required to ensure that all children and families receive the services they need to succeed; and

11 *Whereas* the current efforts to help said children and families lack accountability and  
12 consistency; and

13 *Whereas* services are not consistently available in all communities;

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

16 2. It is the intent of the General Court to create an accountable, community-based system that  
17 provides consistent services throughout the Commonwealth to address the needs of families and  
18 children in crisis by providing them with an array of resources. The goal of said system is to  
19 preserve and strengthen families while ensuring the healthy emotional, mental, and social  
20 development of the child. These services shall focus on creating a stable environment and  
21 strengthening the family as a whole while emphasizing parental responsibility.

22 Said community-based system shall provide the family and child with immediate responses for  
23 the stabilization of the family, as well as to connect the family to additional services in the  
24 community through referrals and advocacy. The services provided to the families and children  
25 involved shall be provided on a continuum of increasing intensity with the goal of keeping the  
26 child out of the juvenile justice and child protection systems. The system shall include a  
27 mechanism for the collection and analysis of information which will enable the Commonwealth  
28 to evaluate the effectiveness of services and to identify gaps in services. It is the intent of the  
29 General Court to reserve judicial intervention for those children and families who require  
30 services beyond said community-based services in order to achieve stabilization and resolution.

31 3. For the purpose of this Section the following words shall have the following meanings:

32 ‘Child requiring assistance’: a child between the ages of 6 and 18 who repeatedly runs away  
33 from the home of his parents or legal guardian or repeatedly fails to obey the lawful and  
34 reasonable commands of his parents or legal guardian, thereby interfering with said parent’s or

35 legal guardian's ability to adequately care for and protect said child or repeatedly fails to obey  
36 the lawful and reasonable regulations of his school or who is habitually truant;

37 "Community Service Agency": a community-based organization providing services under  
38 contract with the Commonwealth, whose function is to facilitate access to and ensure  
39 coordination of services for families with children with serious emotional disturbance who  
40 require or are already utilizing multiple services, or are involved with multiple child-serving  
41 systems including, but not limited to, the juvenile justice system, department of mental health,  
42 and special education, as agreed upon under the settlement dated August 29, 2006 entered into  
43 by the parties of Rosie D. et al v. Romney civil action No. 01-30199-MAP filed in the United  
44 States District Court.

45 'Family with children requiring assistance': the parents, guardians, siblings, and any other  
46 relatives or caretakers responsible for a child between the ages of 6 and 18 who need assistance  
47 from state, local, or private agencies, or providers of social, educational health, mental health, or  
48 behavioral health services in order to adequately care for and protect the child;

49 'Habitually truant': a child between the ages of 6 and 18 not otherwise excused from attendance  
50 in accordance with the lawful and reasonable regulations of his school who fails to attend school  
51 for more than 8 school days in a quarter;

52 'Secretary': the secretary of the Executive Office of Health and Human Services.

53 4. (a) The secretary, in consultation with the Commissioner of the Department of Children and  
54 Families, the Commissioner of the Department of Youth Services and the Commissioner of the  
55 Department of Mental Health, shall establish a network of child and family service programs  
56 throughout the Commonwealth to provide community-based services to all children and families

57 who are at risk of contact with the juvenile justice system or the child protection system, families  
58 with children requiring assistance, and children who require assistance. The secretary shall enter  
59 into contracts with the Community Service Agencies (CSAs) who shall act as Community-Based  
60 Service Centers, to implement the program and provide services which are within their capacity.  
61 The Community-Based Service Centers shall be permitted, subject to approval by the Secretary,  
62 to subcontract with other local providers as needed to provide the full complement of services  
63 required under paragraph 8 of this section.

64 (b) The purpose of the community-based services program shall be to assist families so that  
65 children will be able to continue residing with their families in their home communities; assist  
66 families to enable children to continue as students in their community schools; strengthen the  
67 relationships between children and families; and provide coordinated, comprehensive,  
68 community-based services for children at risk of dropping out of school delinquency, or  
69 engaging in behaviors which impede the likelihood of their leading healthy, productive lives.

70 (c) The secretary shall:

- 71 (i) design models for delivery of community-based services by community-based  
72 organizations and collaborations of public and private organizations;
- 73 (ii) pilot alternative systems to address the problem of children running away from their  
74 parents or legal guardians;
- 75 (iii) develop standards necessary to achieve and maintain on a statewide basis  
76 comprehensive and integrated community-based services for children and families;
- 77 (iv) monitor and provide technical assistance to providers of community-based services;
- 78 (v) adopt a standard intake screening and assessment tool to evaluate all families and  
79 children seeking community-based services which identifies the family's strengths,

80 resources, and service needs such as mental health, behavioral health, or substance abuse  
81 treatment, basic family shelter, clothing and food needs, child care needs, health  
82 insurance status, legal issues, education placement, and child protection;  
83 (vi) create a data collection system for use by programs which maintains the privacy of  
84 clients served, assists programs and the executive office of health and human services in  
85 addressing the needs of the population to be served, collects information related to,  
86 among other things, the insurance status and benefit coverage of clients served, income  
87 documentation as needed to apply a sliding fee scale for payment or waiver of payment  
88 for services, and other information that may assist the program and the secretary in  
89 providing services, identifying service needs and gaps, and evaluating the effectiveness  
90 of community-based services.

91 5. (a) Subject to appropriation, the secretary shall make grants for the purpose of planning,  
92 establishing, operating, coordinating, and evaluating centers, which will provide community-  
93 based services. At least one grant shall be awarded for the operation of a community-based  
94 services program in each of the 29 Department of Children and Families service areas.

95 Additionally, two grants shall be awarded for runaway treatment and prevention programs, one  
96 in an urban location and one in a rural location. Grants may award funding for up to five years  
97 subject to demonstration of effectiveness and the submission of annual reports to the secretary.

98 (b) Preference in awarding the grants shall be given to the CSA for the service area wherever the  
99 experience and resources of the CSA will promote efficiency and increased access to services. In  
100 circumstances where, in the judgment of the secretary, the CSA is not the appropriate selection  
101 for the Community-Based Services Center, proposals may be submitted by a local school or  
102 other local public agency or private organization or medical or mental health care providers.

103 (c) The secretary shall issue requests for proposals for the provision of community-based  
104 services. Proposals must demonstrate expertise in assisting children and families who are at risk  
105 of contact with the juvenile justice system or the child protection system and program staffing  
106 which meets the credentialing and caseload criteria as defined by the secretary. Proposals shall  
107 also require that applicants submit:

108 (i) A plan for development, implementation and coordination of direct services as  
109 required under paragraph 8 of this section for families from public and private providers;  
110 (ii) A plan for the establishment of a local advisory board which, wherever possible, shall  
111 be a subcommittee of the Systems of Care Committee required of all CSAs to focus on  
112 the needs of families and children at risk of involvement in the juvenile justice system  
113 and the child protection system. The subcommittee shall include: representatives from  
114 school districts, police officers, juvenile probation officers, district attorneys, attorneys  
115 who represent children, mental health clinicians, behavioral health providers, parents and  
116 youth. The committee may also include local religious organizations, representatives of  
117 local businesses, higher education, social service agencies, public health agencies and  
118 other persons with experience in assisting youth and families in crisis. Membership shall  
119 be broadly representative of the racial ethnic and economic diversity of the  
120 community. The local advisory boards may, where necessary to facilitate work in  
121 communities, create similarly constituted work groups for each municipality in the  
122 service area;

123 (iii) Periodic evaluation of the success in achieving program goals a process for making  
124 adaptations and improvements based on evaluation information.

125 6. (a) Community-based services shall be available to children between the ages of 6 and 18 who  
126 are habitually truant or children between the ages of 6 and 18 who run away from the home of  
127 their parents or legal guardian or refuse to obey the lawful rules of their parents or legal guardian  
128 or repeatedly fail to obey school rules and to families whose children engage in such behaviors.

129 (b) Whenever the staff of the program offering community-based services determines that a  
130 family seeking or referred for services for a child has significant and complex medical needs  
131 which cannot be met by the program or where the child's behavior presents a significant risk of  
132 harm to the child himself, the family or the community, the child and family shall be referred to  
133 other services pursuant to paragraph 5 of this section.

134 (c) Where a youth has been charged with a delinquency offense or is an adjudicated delinquent,  
135 eligibility for participation in community-based services shall be determined by the program  
136 administrator after a review of the facts surrounding the offense by a team consisting of: a  
137 community-based services caseworker, probation officer, family members and the counsel  
138 representing the child in the delinquency matter.

139 (d) Where the child is in the custody of the department of children and families and residing in  
140 an out-of-home placement, eligibility for participation in community-based services shall be  
141 determined by the program administrator after a review of the facts surrounding the placement  
142 by a team consisting of the community-based services caseworker, the department of children  
143 and families caseworker, a responsible adult with whom the child has an ongoing connection,  
144 and any counsel representing the child in the matter of placement and custody.

145 (e) Where a child or family is denied access to community-based services for reasons other than  
146 those described in this section, the program shall provide a written explanation of reasons for  
147 exclusion and the identification of other community-based services and resources available to

148 them.

149 (f) When a child or family is denied services pursuant to this section, the program shall contact  
150 the family in person or by telephone within two weeks after the denial decision to determine if  
151 the other appropriate services have been obtained and whether or not community-based services  
152 are now appropriate. The program shall provide to the family and child a notice in a form  
153 acceptable to the juvenile court stating that the family is not eligible for community-based  
154 services and listing the reasons for ineligibility.

155 7. (a) A child or family may seek assistance from a community-based services program directly  
156 and without referral.

157 (b) Pursuant to Section 39R and 39U of Chapter 119, families may be ordered to seek services  
158 from a Community-Based Service Center by a probation officer or judge.

159 (c) Employees of the departments of children and families or youth services may make referrals  
160 to Community-Based Service Centers as part of a case plan.

161 (d) Voluntary referrals to community based services may be made by any professional who is  
162 working with the family or child(ren).

163 (e) School administrators must refer children or families to community-based services prior to  
164 expelling them for failure to comply with the lawful and reasonable rules of the school or for  
165 habitual truancy, and the outcome of the services shall be considered as part of any decision to  
166 expel for these violations. Provided that when a school administrator refers a child for habitually  
167 truant behavior, it must be shown that the school, child, and family have completed a department  
168 of education certified truancy program, if such a program is available at the school. Whenever a  
169 child or family seeks assistance for habitually truant behavior, the program staff shall assist the

170 family in gaining access to the child's school's department of education certified truancy  
171 program.

172 8. Community-based services shall include, but are not limited to:

173 (i) program representatives available to respond to requests for service 24 hours a day, 7  
174 days a week;

175 (ii) initial response to referral or request for services by a family or child, which includes  
176 a meeting to determine the circumstances which resulted in the request or referral within  
177 six hours of contact;

178 (iii) a plan for stabilization of any crisis, which initiated the referral or request within a  
179 reasonable time;

180 (iv) assessment and screening of each person requesting services and, if possible, all  
181 family members residing in the household using the standard intake tool as established by  
182 the secretary pursuant to paragraph 4(c)(v) within seventy-two hours of the referral or  
183 request. The person conducting the assessment and screening must note the reasons why  
184 any family member was not screened within seventy-two hours of the initial request and  
185 must complete the screening process for all family members residing in the household  
186 within one week of the initial referral;

187 (v) assignment of a case manager to each family upon assessment;

188 (vi) creation of a family service plan within ten working days from initial contact, which  
189 includes: strength-based assessment and statement of family needs presented; needs of  
190 the child; needs of the parents, legal guardian or legal custodian; measurable objectives  
191 that address the identified needs; services and treatment to be provided by the  
192 community-based services program or to which the family and child will be referred,

193 which may include but are not limited to: community, medical, mental health and  
194 behavioral health services, assistance with obtaining special education evaluation and  
195 services and remedial education services, assistance with insurance coverage issues;  
196 recreational services; mediation and family group conferencing. For each service or  
197 treatment included, the plan shall contain a statement clearly identifying the type of  
198 services or treatment, frequency of services or treatment, location of responsible service  
199 providers or staff, and timeframes for achieving the plan objectives. The service plan  
200 shall be reviewed and agreed upon by the family before implementation;

201 (vii) periodic review of the family service plan by the case manager and the family to  
202 determine whether it is being followed and if it is effective;

203 (viii) intensive crisis counseling for both children and families;

204 (ix) parent training in appropriate skill areas directly related to the needs of the family;

205 (x) data collection in a format as required by the secretary for each referral or request,  
206 which protects the privacy of the individuals seeking services while providing a means to  
207 insure that information necessary to optimize the likelihood of successful outcome for  
208 each person seeking services and to permit the evaluation of the effectiveness of the  
209 program;

210 (xi) compilation and dissemination to the general public of information about family  
211 support resources and services available in the community;

212 (xii) crisis intervention residential placements for children for up to 72 hours;

213 (xiii) voluntary respite residential placement of the child for up to 21 days; and

214 (xiv) mediation or alternative dispute resolution.

215 (xv) The program shall make available to the public information that identifies a variety

216 of community-based educational, social, medical, mental health and behavioral health  
217 services available to assist families and children.

218 9. (a) Participation in community-based services shall be pursuant to a voluntary agreement of  
219 the parent or legal guardian and the child. Families or children may terminate their involvement  
220 at any time.

221 (b) Services may be provided for 120 days. After the initial 120 day period families or children  
222 and the community-based services program case manager may agree to extend services for up to  
223 an additional 90 days.

224 (c) Covered services shall be billed to the insurance provider for the client.

225 (d) The program shall advise the parents or legal guardian that they may be responsible for co-  
226 payments for covered services and for contributing to the cost of non-covered services for the  
227 child or family. Allowable rates for services not covered by insurance, including the portion for  
228 which parents will be held responsible, shall be set by the secretary and periodically adjusted as  
229 needed to meet actual costs.

230 (e) In the absence of the consent of a parent or legal guardian, respite care may be provided to a  
231 child pursuant to the provisions and subject to the limitations of chapter 119 section 23  
232 paragraph 7.

233 10. (a) Each family shall have a case manager who shall be responsible for working with the  
234 family to develop a crisis stabilization plan where warranted and a family service plan;  
235 coordinating services; assisting the family to resolve administrative issues including issues with  
236 insurance coverage, interagency issues and other issues which serve as barriers to successful

237 implementation of the service plan; facilitating communication between providers as authorized  
238 by the child or their parent or legal guardian; implementing resolution processes when necessary;  
239 and working with the case staffing team to create an after care plan.

240 (b) The composition of the case staffing team shall be based on the needs of the family and child  
241 and be chosen after consultation with the child and their parent or legal guardian. It shall include  
242 the case manager, the primary providers of services to the child and family, a representative from  
243 the child's school district. The case staffing team may also include other individuals with  
244 professional expertise in health care, mental health care, behavioral health care, substance abuse,  
245 social or educational services, or other persons recommended by the child, parent or legal  
246 guardian, or case manager.

247 (c) The service engagement team shall be comprised of the Director of the Community- Based  
248 Service Center or their designee, members of the local advisory board and other professionals  
249 who are charged with developing engagement strategies for the Center and, at the request of the  
250 child, parent or guardian, or the case manager, addressing barriers to the initial engagement of  
251 individual children and their families.

252 (d) The case manager shall, in consultation with the family, develop a family service plan which  
253 shall be provided to the child and their parent or legal guardian and other family members  
254 requiring assistance who are involved in the plan within ten days of the initial referral. Upon  
255 receipt of the plan, the child and each family member named in the plan shall accept or reject the  
256 services and provisions in writing. Each service provider identified in the plan shall also accept  
257 or reject their participation in writing. If the plan is accepted, it shall be implemented  
258 immediately. If the child or family is not in agreement with the plan and attempts by the case

259 manager to develop an alternative plan are unsuccessful or when the services required are not  
260 available, the child, their parent or guardian or the case manager may request review by the  
261 service engagement team who shall assist the case manager, child and family in developing an  
262 alternative plan.

263 (e) The case manager and the family shall be equally responsible for implementing the plan. The  
264 case manager, the family and child shall periodically review the progress towards achieving the  
265 objectives of the plan in order to:

- 266 (i) advise the case staffing team of the need to make adjustments to the plan; or
- 267 (ii) terminate the case as indicated by successful or substantial achievement of the  
268 objectives of the plan.

269 (f) The case manager shall request a meeting of the family and child at a time and place that is  
270 convenient to them with a case staffing team to review the family service plan of any family or  
271 child whenever:

- 272 (i) the family or child is not in agreement with the services or treatment offered; or
- 273 (ii) the family or child does not participate in the services or treatment selected; or
- 274 (iii) a school state agency or private service provider does not provide the services or  
275 treatment selected; or
- 276 (iv) the case manager needs assistance in developing an appropriate plan for the provision  
277 and funding of services; or
- 278 (v) there is cause to believe that continuation of services is no longer appropriate because  
279 the child has complex medical needs which cannot be met by the program or where the

280 child's behavior presents a significant risk of harm to the child himself the family or the  
281 community.

282 (g) The parent or legal guardian or child who is over the age of 16 or any other member of the  
283 case staffing team may make a written request that the case manager convenes a resolution  
284 meeting at any time if the member finds that doing so is in the best interest of the family or child.  
285 A resolution meeting requested by a parent or legal guardian or child who is over the age of 16  
286 must be convened within 7 working days from the date that the case manager receives the  
287 request in writing.

288 11. (a) Not more than 110 days after the assessment and screening of a child and family referred  
289 to or requesting community-based services, or 10 days prior to any extension of services granted  
290 under paragraphs c and d of this section, the case manager shall convene a resolution meeting  
291 with the case staffing team to assess whether the goals of the family service plan have been  
292 achieved or if further services are in the best interest of the family and child. After the meeting  
293 the case manager shall document the resolution of the case as follows:

294 (i) that the family and or child will benefit from additional community-based services; or

295 (ii) that it is unlikely the family and child will benefit from additional community-based  
296 services at this time and the case is discharged; or

297 (iii) that the family failed to cooperate with the service plan and the case is discharged; or

298 (iv) that the public or private agencies designated in the plan to provide specific  
299 services did not provide those services and the case is discharged; or

300 (v) that the presenting behaviors are resolved and the case is discharged.

301 (b) Within 7 days after meeting, the case manager shall provide the parent or legal guardian with  
302 a written report that details the reasons for the decisions made at the resolution meeting. The  
303 report shall contain a notice in a form acceptable to the juvenile court stating that community-  
304 based services have terminated and whether or not the case manager believes it is likely that the  
305 child and family would benefit from further services.

306 (c) If the family, child and case manager agree to extend services, then the services shall be  
307 extended for an additional 90 days.

308 (d) If the family was referred to community-based services by a court or a probation officer, then  
309 services may be extended for additional 90 day periods at the request of the court or probation  
310 officer.

311 12. (a) The report and any documentation of services provided to the family and child shall not  
312 be public records. Statements made by the family and child while receiving services from the  
313 program shall be treated as confidential. Such statements may not be used in school disciplinary  
314 proceedings and may not be admitted into evidence in any court proceeding arising from the  
315 circumstances which brought the family and child to the program unless the child and family  
316 waive their privilege or unless a court finds that such inadmissibility would result in substantial  
317 harm to the child.

318 (b) Any person offering community-based services to children under this program shall be  
319 required to report suspected physical or emotional abuse or neglect of a child pursuant to General  
320 Laws Chapter 119 Section 51A.

321 (c) Notwithstanding any provision to the contrary, in the absence of specific written directive  
322 from the child and or member of the family who is receiving service, information about the case,

323 including interactions with service providers and protected health information services, may be  
324 shared among members of the case team as needed to coordinate treatment and provide  
325 appropriate case management.

326 13. There shall be an advisory council appointed by the secretary, which shall advise the  
327 secretary on creation, operation, and effectiveness of the community-based services  
328 program. Members shall include the commissioners or their designees of the departments of  
329 public health, mental health, developmental services, children and families, youth services,  
330 transitional assistance, elementary and secondary education and public safety, the director of the  
331 office of Medicaid or his designee, the commissioner of probation or his designee, the chief  
332 justice of the juvenile court or his designee, a district attorney, members of the bar who represent  
333 children in juvenile court proceedings, a designee of the committee on public counsel services,  
334 an education advocate, representatives of urban, suburban, and rural municipal police  
335 departments and school districts, providers of service to children and families, parents, and at  
336 least 2 young adults who have participated in a community-based services program.

337 14. The secretary shall report annually on February 1 to the joint committee on children, families  
338 and persons with disabilities and the house and senate committees on ways and means and the  
339 child advocate on the progress of the community-based services program.

340 16. The secretary shall report annually on February 1, to the joint committee on children,  
341 families and persons with disabilities, the house and senate committees on ways and means, and  
342 the child advocate on the progress of the community-based services program.

343 SECTION 2: Chapter 69 of the General Laws is hereby amended by adding after section 1N the  
344 following new section:

345 Section 1O. Within three years of the effective date of this act, the department shall, subject to  
346 appropriation, establish a discretionary grant program to assist schools in planning and  
347 implementing truancy preventions programs which meet the certification requirements  
348 established pursuant to section 1P of Chapter 69.”

349 SECTION 3: Chapter 69 of the General Laws is hereby amended by adding after section 1O the  
350 following new section:

351 Section 1P

352 The Department of Education shall promulgate regulations establishing a truancy prevention  
353 program certification process. School districts shall establish a truancy prevention program  
354 which meets the requirements for certification by the department. .

355 SECTION 4:Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to  
356 39J, inclusive, and adding the following new sections:

357 Section 39K. Definitions

358 “Child requiring assistance”, a child below the age of eighteen who repeatedly runs away from  
359 the home of his parents or legal guardian, or repeatedly fails to obey the lawful and reasonable  
360 commands of his parents or legal guardian, thereby interfering with said parent’s or legal  
361 guardian’s ability to adequately care for and protect said child, or repeatedly fails to obey the  
362 lawful and reasonable regulations of his school, or who is a habitually truant;

363 ‘Family requiring assistance’, the parents, guardians, siblings and any other relatives or  
364 caretakers responsible for a child between the ages of 6 and 18 who need assistance from state,

365 local, or private agencies or providers of social, educational, health, mental health, or behavioral  
366 health services in order to adequately care for and protect the child;

367 “Habitual truant”, a child between the ages of 6 and 18 , not otherwise excused from attendance  
368 in accordance with the lawful and reasonable regulations of his school, who fails to attend school  
369 for more than 8 school days in a quarter;

370 “Parent”, includes a legal guardian or other person legally responsible for a child’s care.

#### 371 Section 39L. Jurisdiction

372 The Juvenile court department has original and exclusive jurisdiction over any proceeding  
373 commenced under section 39N alleging that a family or child requires assistance.

#### 374 Section 39M. Nature of the Proceedings

375 1. Proceedings pursuant to sections 39K to 39X, inclusive, shall not be deemed criminal  
376 proceedings and any record of these proceedings, including the filing of a request for assistance  
377 and creation of a docket, shall not be entered in the Criminal Offender Record Information  
378 System.

379 2. Proceedings pursuant to sections 39K to 39X, inclusive, shall be confidential and not be open  
380 to the public.

#### 381 Section 39N. Request for Assistance

382 1. A proceeding to determine whether or not a child or family requires assistance is originated by  
383 the filing of a request for assistance, stating the petitioner’s information and belief:

384 (a) that the child repeatedly runs away from the home of his parents or legal guardian or  
385 repeatedly fails to obey the lawful and reasonable commands of his parents thereby  
386 resulting in said parent's inability to adequately care for and protect said child, or that the  
387 child is habitually truant or repeatedly fails to obey the lawful and reasonable regulations  
388 of his school;

389 (b) that the child was under the age of 18 at the time the specified acts took place,

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

392 (d) when the petitioner is a school district, the request for assistance shall also include:

393 (i) if the request for assistance states that a child is habitually truant, a  
394 statement of the actions taken by the school district to comply with its  
395 obligations under its truancy prevention program certified pursuant to  
396 chapter 69, section 1O and to improve the school attendance of the  
397 child. The request for assistance shall also state whether or not the  
398 child and his family have participated in the truancy prevention  
399 program.; and

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

403 (e) that the child and family require assistance.

404 2. The following persons may originate a proceeding under this section:

405 (a) a police officer;

406 (b) a parent;

407 (c) a school district;

408 3. The petitioner shall attach to the request for assistance the notice of termination of  
409 community-based services as provided for in chapter 6A, section 16H(11)(b) or notice of  
410 ineligibility as provided for in chapter 6A, section 16H(e). Except as provided below, the clerk  
411 shall not accept for filing any request for assistance that does not have attached thereto said  
412 notice of termination or ineligibility. Any person or agency seeking to file a request for  
413 assistance pursuant to this section which does not have attached thereto the notice of termination  
414 of community-based services shall be referred by the clerk of the court to the program designated  
415 by the secretary of the executive office of health and human services to provide community-  
416 based services in the juvenile court district where the child resides. If the petitioner is a police  
417 officer, the clerk may accept a written statement of the reasons for the officer's belief that the  
418 referral to community-based services prior to filing the request for assistance would present a  
419 risk of harm to the child or others in lieu of the notice of termination or ineligibility. The clerk  
420 shall then immediately contact the designated community-based services to provide notice that a  
421 request for assistance has been filed. If the petitioner is a parent, then the clerk may accept a  
422 written statement of the parents' reasons for the parents' belief that referral to community based  
423 services prior to filing the request for assistance would present a risk of significant harm to the  
424 child, family or community. The court shall then immediately review the request for assistance

425 and if the court finds that referral of the family and child to community based services is likely to  
426 result in said harm, then the court shall order the creation of a docket for the matter and assign a  
427 probation officer to conduct an immediate inquiry and report to the court with advice on how to  
428 proceed to obtain assistance for the child.

#### 429 Section 39O Notice

430 1. Except as provided in subsection 2, on the filing of a request for assistance pursuant to this  
431 section, the court may cause a copy of the request for assistance and a summons to be issued,  
432 requiring the child and each parent to appear at the court at a time and place named to address  
433 the request for assistance

434 2. In proceedings originated by a parent the court shall cause a copy of the request for assistance  
435 and notice of the time and place to be heard to be provided to that person when the request is  
436 filed. The court is not required to issue a summons to that person.

437 3. A copy of the request for assistance served or provided under subsection 1 or 2 shall be  
438 accompanied by a notice that, in the event that the court deems it necessary to place the child in  
439 the care and custody of the department of children and families, said parent may be named as a  
440 respondent in any child support proceeding brought in connection with the child's care

441 4. Unless service of the summons required by this section is waived in writing, such summons  
442 shall be served by a constable or police officer, either by delivering it personally to the person to  
443 whom addressed, or by leaving it with a person of proper age to receive the same, at the place of  
444 residence or business of such person, and said constable or police officer shall immediately make  
445 return to the court of the time and manner of service.

446 Section 39P Scheduling the Fact Finding Hearing

447 The clerk shall set a date for a fact finding hearing no more than 90 days from the date the  
448 request for assistance is filed. If at any time prior to the hearing the parents, child, petitioner and  
449 probation officer agree, the fact finding hearing may be postponed for an additional 90 days after  
450 the expiration of the initial 90 day period.

451 Section 39Q Appointment of Counsel

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

457 2. When the request for assistance is filed, each parent or legal guardian of the child shall be  
458 informed that he has the right to participate as a party in any proceeding under sections 39K to  
459 39X involving his child and that he has the right to counsel at any hearing or proceeding  
460 regarding custody of his child. If said parent or legal guardian is financially unable to retain  
461 counsel, the court shall appoint counsel for said parent or legal guardian.

462 3. The court shall determine whether the parent or legal guardian of a child alleged to require  
463 assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the  
464 court shall assess a \$300 fee against the parent or legal guardian to pay for the cost of counsel  
465 appointed for the child. If the parent or legal guardian is determined to be indigent but is still

466 able to contribute toward the payment of some of said costs, the court shall order the parent or  
467 legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child.

468 Section 39R Preliminary Inquiry by Probation

469 1. The chief probation officer or his designee shall conduct a preliminary inquiry to determine  
470 whether in his opinion the best interests of the child and family require that crisis intervention  
471 services be provided to the child and family.

472 The probation officer in his discretion may:

473 (a) refer the family and child to the program designated to provide community-based  
474 services for this juvenile court division; the probation officer may confer with the  
475 provider of community-based services to resolve the situation which formed the basis of  
476 the request for assistance;

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

479 (c) conduct conferences with the child, the child's family and the petitioner for the  
480 purpose of effecting adjustments or agreements which are calculated to resolve the  
481 situation which formed the basis of the request for assistance;

482 (d) if the child or his parents fail to participate in good faith with the referrals or  
483 conferences arranged by the probation officer or if the probation officer is not able to  
484 refer the child or his parents to an appropriate public or private organization which is

485 willing and able to provide appropriate services, the probation officer shall so certify in  
486 writing and present these findings to the court.

487 2. (a) The probation officer shall gather information concerning the child and family which in  
488 both substance and format is compatible with and complementary to the information gathered by  
489 programs providing community-based services pursuant to section 16H of chapter 6A.

490 (b) The Commissioner of Probation shall establish a data collection system for use by probation  
491 officers assisting children pursuant to sections 39K through 39X which maintains the privacy of  
492 clients served, assists the court in addressing the needs of the population to be served, collects  
493 information related to, among other things the insurance status and coverage of clients served,  
494 and other information that may assist the commissioner and the court in evaluating the  
495 availability and effectiveness of services for children who are the subjects of requests for  
496 assistance pursuant to this section.

497 (c) The Commissioner of Probation shall report annually to the Child Advocate on the assistance  
498 provided by probation officers to children and families under Sections 39K to 39X. The report  
499 shall be filed on October 1 of each year and shall include for each juvenile court district: the  
500 number of children and families receiving assistance, an analysis of the services provided and an  
501 identification of gaps in services available, the status or resolution of each request for assistance  
502 filed in the previous year, and the numbers of children who are the subject of a request for  
503 assistance and also charged with a delinquency matter in the previous year,

504 3. Conferences and referrals arranged under this section may extend for a period not to exceed 90  
505 days from the date that the request for assistance was filed, unless the parent, child and petitioner

506 voluntarily agree in writing to a continuation of such conferences or referrals for an additional  
507 period not to exceed 90 days from the expiration of the original period. Upon the expiration of  
508 the initial 90 day period, or of such additional 90 day period, the request for assistance may be  
509 dismissed and the child and his parents discharged from any further obligation to participate in  
510 such conferences and referrals, or a fact finding hearing shall be held.

#### 511 Section 39S Custody, Failure to Appear

512 If, after a hearing at which the child is represented by counsel, the court finds that a child alleged  
513 to require assistance by reason of repeatedly failing to obey the lawful and reasonable commands  
514 of his parent is likely not to appear at the fact finding hearing or at the disposition hearing, the  
515 court may place the child in the temporary custody of the Department of Children and Families.

516 An order under this Section shall be valid for no more than 15 days without the child being  
517 brought again before the court for a hearing on whether the order should be continued for another  
518 15 day period. If the court decides to extend the order, it shall note in writing the detailed  
519 reasons for its decision. An order under this section may be in effect for no more than 45 days  
520 total.

521 A child who is the subject of a request for assistance may not be confined in shackles or similar  
522 restraints or in a court lockup facility in connection with any proceedings pursuant to Sections  
523 39K through 39X.

#### 524 Section 39T Withdrawal of Request for Assistance

525 The petitioners may, upon a showing that the circumstances which brought the matter before the  
526 court have been resolved, withdraw the request for assistance at any point prior to a hearing to  
527 determine the disposition of a request for assistance.

#### 528 Section 39U Fact Finding Hearing

529 1. The court shall hold a fact finding hearing in which it shall receive evidence from the  
530 petitioner, the parent, and the community-based services program case manager and the  
531 recommendation of the probation officer.

532 2. At the fact finding hearing the court shall review any notice of termination of community-  
533 based services. The court shall consider any available documentation of diligent attempts to  
534 provide appropriate services and determine whether such efforts or services provided were  
535 sufficient. With the consent of the parent(s) and child the court may consider any written reports  
536 from service providers which would otherwise be subject to confidentiality or privilege.

537 The court may order the child and the parent or other person legally responsible for the child to  
538 participate in community-based services regardless of whether or not the child and parents have  
539 previously used community based services on a voluntary basis. If the designated program  
540 thereafter determines that the case has been successfully resolved, it shall so notify the court, and  
541 the court shall dismiss the request for assistance.

542 3. The court shall either:

543 (i) dismiss the request for assistance because the circumstances which led to the filing of  
544 a request for assistance have been resolved and the court finds that the child and family  
545 do not require assistance;

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

551 (iii) find that the child and family require assistance and schedule a hearing for  
552 disposition

553 4. No statements made by a child, family member, or by any other person during the period of  
554 inquiries, conferences, or referrals may be admitted at the fact finding hearing without the  
555 consent of the child or family member who made the statement, but may be received by the court  
556 at the hearing for disposition

#### 557 Section 39V Disposition Hearing

558 1. At any hearing held to determine whether a child and family require assistance, the child and  
559 his attorney shall be present and the parents or legal guardian shall be given an opportunity to be  
560 heard. The petitioner who files the request for assistance shall bear the burden of presenting  
561 evidence proving that the child and family require assistance. If the court finds the allegations in  
562 the request for assistance have been proved at the fact finding hearing by a preponderance of the

563 evidence, it may find that the child and family named in such request for assistance to be a child  
564 and family requiring assistance.

565 2. Upon making a finding that a child and family require assistance, the court shall convene a  
566 meeting of the probation officer who conducted the preliminary inquiry, the case manager, if  
567 any, from the community-based services program, the petitioner, a representative from the  
568 child's school, the child's parent, a representative of the department of children and families, and  
569 any other person the court deems helpful in determining the assistance to be offered to the child  
570 and family. The persons at the meeting shall present written findings to the court to advise the  
571 court on appropriate treatment and services for the child and family and appropriate placement  
572 for the child and appropriate conditions and limitations of such placement. The court, taking into  
573 consideration those findings and the physical and emotional welfare of the child, may make any  
574 of the following orders of disposition:

575 (a) subject to any conditions and limitations the court may prescribe, including provision  
576 for medical, psychological, psychiatric, educational, occupational and social services, and  
577 for supervision by a court clinic or by any public or private organization providing  
578 counseling or guidance services, permit the child to remain with his parents;

579 (b) subject to such conditions and limitations as the court may prescribe, including, but  
580 not limited to provisions for those services described in clause (a), place the child in the  
581 care of any of the following:

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

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

587 (iii) a private organization which, after inquiry by the probation officer or other  
588 person or agency designated by the court, is found to be qualified to receive and  
589 care for the child.

590 (c) subject to the provisions of sections 32 and 33 and with such conditions and  
591 limitations as the court may recommend, place the child in the custody of the department  
592 of children and families. If the court chooses to place the child in the custody of the  
593 department then at the same time, the court shall consider the provisions of section 29C  
594 and shall make the written certification and determinations required by said section 29C.

595 When the court has placed a child in the custody of the department, then the department:

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

600 (ii) may not refuse out of home placement when requested by the  
601 child if there is a substantiated history of abuse and neglect in  
602 the home by the parent or legal guardian;

603 (iii) subject to clauses (i) and (ii), shall direct the type and length of  
604 such out-of-home placement;  
605 (iv) subject to clauses (i) and (ii), shall give due consideration to the  
606 recommendations of the court. Whenever the department  
607 decides not to carry out the recommendations of the court  
608 regarding placement and treatment of the child it shall present  
609 the reasons for its decision and the alternative plan for treatment  
610 and placement in writing to the court.

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

618 (e) Notwithstanding the provisions of subsection 2 (d) the court may not order the child  
619 to be placed in the custody of the department of youth services and may not be placed in  
620 a locked facility.

621 3. A child found to require assistance shall not be placed in a locked facility or any facility  
622 designated or operated for juveniles adjudicated delinquent. However, such child may be placed  
623 in a facility which operates as a group home to provide therapeutic care for juveniles regardless  
624 of whether juveniles adjudicated delinquent are also provided care in such facility.

625 Section 39W Duration of Assistance

626 1. Any order of disposition under Section 39V shall continue in force for not more than 90 days;  
627 provided, however, that the court which entered the order may, after a hearing, extend its  
628 duration for up to three additional periods, each such period not to exceed 90 days, if the court  
629 finds that the purposes of the order have not been accomplished and that such extension would  
630 be reasonably likely to further those purposes. Orders shall be extended upon a finding that the  
631 child or family are not participating in good faith.

632 2. No order shall continue in effect after the eighteenth birthday of a child named in a request for  
633 assistance.

634 Section 39X. Custodial Protection

635 1. (a) A child may be taken into custodial protection for engaging in the behaviors described in  
636 section 39N, only if such child has failed to obey a summons issued pursuant to section 390, or if  
637 the law enforcement officer initiating limited custody has probable cause to believe that such  
638 child has run away from the home of his parents or legal guardian.

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

642 (c) After making every reasonable effort to give notice under paragraph (b), the officer shall:

643 (i) release the child to the custody of his or her parent or other person legally responsible  
644 for his or her care upon the written promise, without surety, of the person to whose

645 custody the child is released that he will bring the child to the program designated to  
646 provide community-based services for the geographic region which constitutes the  
647 district of the juvenile court department within which the child was taken into custodial  
648 protection or in which the child resides, at a time and place specified in writing; or

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

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

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

661 (d) In the absence of special circumstances, the officer shall release the child to his parents or  
662 other person legally responsible for his care in accord with paragraph (c)(i).

663 (e) A child may not be securely detained in a police station or town lockup. At no time shall a  
664 child be placed in any locked facility under the supervision of any police department, sheriff  
665 department, or department of youth services.

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

669 SECTION 5

670 Notwithstanding any general law to the contrary the secretary of the executive office of health  
671 and human services and the commissioners of departments of public health, mental health,  
672 developmental services, children and families, youth services and transitional assistance shall  
673 enter into memoranda of understanding among themselves and with the department of education,  
674 office of the commissioner of probation, the juvenile court, municipal police departments and  
675 school districts to provide coordination, delivery, and funding of services to children and  
676 families who, pursuant to the provisions of section 16H(7)(b) of chapter 6A of the General Laws,  
677 are not eligible for community-based services established pursuant to section 16H of chapter 6A.

678 SECTION 6

679 The secretary of the executive office of health and human services shall pilot a program to  
680 address the unique needs of girls who run away from their parents and legal guardians.

681 SECTION 7

682 The department of education shall pilot a truancy prevention program using a restorative justice  
683 format in at least one urban high school in the Commonwealth. The department shall evaluate  
684 the effectiveness of the program in preventing truancy and enhancing the child's academic  
685 performance and report the results of that evaluation to the board of education.

686 SECTION 8.

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

689 SECTION 9.

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