Standing Order 3-21: Child Requiring Assistance Proceedings

I. SCOPE AND PURPOSE

This standing order sets forth procedures in the Juvenile Court for child requiring assistance proceedings. The purpose of this standing order is to ensure a standard statewide process in the Juvenile Court for these cases that is in keeping with the mission of the Juvenile Court to assist children and strengthen families.

II. DEFINITIONS, (See G.L. c. 119, § 21)

"Child" is a person under the age of 18.

"Child requiring assistance" is a child between the ages of 6 and 18 who: (i) repeatedly runs away from the home of the child's parent, legal guardian or custodian; (ii) repeatedly fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child; (iii) repeatedly fails to obey the lawful and reasonable regulations of the child's school; (iv) is habitually truant; or (v) is a sexually exploited child.

"Custody" is the power to (1) determine a child's place of abode, medical care and education; (2) control visits to a child; and (3) consent to enlistments, marriages and other contracts otherwise requiring parental consent.

"Department" is the department of children and families.

"Fact Finding Hearing" is the hearing referred to in G.L. c. 119, § 39G that occurs following the court's acceptance of the application for assistance.

"Family requiring assistance" is a child, parent, guardian, custodian, sibling or any relative or caretaker responsible for a child requiring assistance.

"Habitually truant" is a school-aged child, not excused from attendance under the lawful and reasonable regulations of such child's school, who willfully fails to attend school for more than 8 school days in a quarter.

"Parent" is a mother or father, unless another relative has been designated as a parent as defined in G.L. c. 118, § 1 for the purposes of receiving benefits from the department of transitional assistance.

"Preliminary Hearing" is the hearing referred to in G.L. c. 119, § 39E that occurs within 15 days of the filing of the application for assistance.

"Sexually exploited child" is any person under the age of 18 who has been subjected to sexual exploitation because such person (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105; (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under section 4A of chapter 272

or (4) engages in common night walking or common streetwalking under section 53 of chapter 272.

Commentary

In order to determine whether a child has 'willfully' failed to attend school under the definition of 'habitually truant', the court must find purposeful conduct by the child and that the child's repeated failure to attend school "arises from reasons portending delinquent behavior." See *Millis Public Schools v. M.P.*, 478 Mass. 767, 775 (2018). The finding of willfulness is a "fact-based inquiry that will depend on the circumstances of each case." *Millis* at 784. The willfulness requirement thus necessitates judicial inquiry into and assessment of the child's reasons for not attending school. Truancy implies volitional conduct by the child for which the child is responsible. Each child's purpose or reasons for missing school should be examined individually in order to determine whether the absences are willful beyond a reasonable doubt.

During the COVID-19 pandemic, many school districts moved to a model of remote learning or a hybrid model combining in-person classes with remote learning. This change in traditional in-person learning effects how the court determines whether a child is 'habitually truant'. The Department of Elementary and Secondary Education promulgated regulations requiring school districts to develop attendance policies specific to remote or hybrid learning models. Absent caselaw or statutory changes addressing this specific issue, schools should provide a copy of its school attendance policy pursuant to 603 CMR 27.08 when filing for habitual truancy if the school is following a remote learning or hybrid model. The court may consider the child's number of absences, the school's virtual attendance policy, whether and how the school made such policy known to students and parents, the reasons that the child was absent, and what steps the school has taken to address the child's chronic absences. While the court may look into the extent that the child was participating in classes as a part of the willfulness analysis, it is not for the court to determine the appropriateness of the attendance policy itself.

The Department of Elementary and Secondary Education requires every school committee to schedule a school year of at least 185 school days, with each school operating for 180 school days. See 603 CMR 27.03. Though the definition of 'habitually truant' refers to failing to attend 8 school days in a quarter, many school districts in the Commonwealth do not follow a quarterly schedule and instead divide the school year into semesters or trimesters. If the school district follows a semester schedule, the number of days to be considered habitually truant would be 16 days. If the school district follows a trimester schedule, then the number of days to be considered habitually truant would be 11 days.

III. FILING OF THE APPLICATION FOR ASSISTANCE, (See G.L. c. 119, §§ 39E, 39H and 39L)

(a) Who May File. A parent, legal guardian, or custodian of a child having custody of the child, may file an application for assistance alleging that the child (1) repeatedly runs away from home of said parent, guardian, or custodian or (2) repeatedly refuses to obey the lawful and reasonable commands of said parent, guardian or custodian resulting in their inability to adequately care for and protect the child.

A school district may file an application for assistance alleging that the child (1) is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, (2) has willfully failed to attend school for more than 8 school days in a quarter or (3) repeatedly fails to obey the lawful and reasonable regulations of the child's school. If the school district is alleging that the child is habitually truant, the school district's application shall state whether the school district has a truancy prevention program, whether the child and family have participated in the school's truancy prevention program, the specific steps taken to prevent the child's truancy if the child and family participated in the program, and the reasons for the child and family not participating in the program if one is available. If the school district is alleging that the child failed to obey the lawful and reasonable regulations of the school, the school district's application shall state the specific steps taken by the school to address the child's conduct.

A parent or police officer may file an application for assistance alleging that the child is a sexually exploited child.

(b) Venue. The application for assistance shall be filed in the Juvenile Court with jurisdiction over where the child resides for an application filed by a parent, legal guardian or custodian or police officer and over the school district responsible for monitoring the child's attendance for applications filed by a school district.

(c) Clerk-Magistrate Referral. Prior to accepting the application for assistance, the clerk-magistrate or his designee shall inform the petitioner that the petitioner may delay filing the request and choose to have the child and the child's family referred to a family resource center in the Juvenile Court division where the child resides and return to court at a later time to file an application for assistance.

(d) Scheduling of the Preliminary Hearing. The clerk shall schedule the preliminary hearing within 15 days of the filing of the application for assistance.

(1) Notification to Child. If the child is not present at the time of the filing of the application for assistance, the clerk shall send a notice to the child regarding the preliminary hearing, together with a copy of the application.

(i) Summons to Child and Parent(s). The court may issue a summons requiring the child to appear at the preliminary hearing. The application for assistance shall be attached to the summons. If the child fails to appear in response to the summons, the court may issue a warrant. The warrant shall instruct the officer to whom it is directed to bring the child directly to the court. If the child is summonsed, the court shall also summons the child's parent(s) who reside in the Commonwealth.

(2) Appointment of Counsel for the Child. Counsel shall be appointed for the child at the time of the filing of the application for assistance. If the child is not present at the time of the filing of the application for assistance, the clerk shall notify counsel of the appointment in accordance with the procedures set forth in

Supreme Judicial Court Rule 3:10, including the child's name, and the date of the preliminary hearing. Counsel shall be responsible for contacting the child prior to the preliminary hearing.

(e) Probation Inquiry. If the child is present at the time of the filing of the application for assistance, the clerk shall notify probation that an inquiry is necessary. The child shall meet with the chief probation officer or his designee for the purposes of conducting an inquiry.

Commentary

Subsection (a). General Law c. 119, § 39H does not address whether a non-custodial parent may file an application. When a non-custodial parent files an application the recommended practice is for the clerk to accept the application and refer it for a probation inquiry. The clerk's office should provide notification of the preliminary hearing to the parent with custody of the child. At the preliminary hearing, the judge may review the application, and within his/her discretion, determine whether the allegations meet the requirements of a child requiring assistance even though the applicant is a non-custodial parent.

The school district shall be required to file using an application specifically for school districts approved by the Chief Justice of the Juvenile Court. Pursuant to G.L. c. 76, § 20, supervisors of school attendance may file applications alleging that the child is truant on behalf of the school district.

Subsection (c). General Law c. 119, § 39E requires the clerk-magistrate to inform a petitioner that they may delay the filing of the application and be referred to a family resource center for assistance. The statute also requires the clerk-magistrate to disseminate to each petitioner educational materials about the family resource centers and the court process, including the types of orders the court may issue and the services available to the child and family through the court. In addition to materials that may be available in each local court, every clerk-magistrate shall provide the *Handbook for Parents, Legal Guardians, and Custodians in Child Requiring Assistance Cases,* published by the Administrative Office of the Juvenile Court, and a pamphlet about the Massachusetts 211 system which helps to connect youth and families with resources in their communities.

Subsection (d)(1). In addition to notifying the child, it is recommended that the court send notification to a non-custodial parent, whose parental rights have not been terminated, if information is provided to the court regarding the non-custodial parent.

Subsection (d)(1)(i). The warrant issued in a child requiring assistance case is known as a warrant of custodial protection. A warrant of custodial protection, unlike an arrest warrant, is not entered into warrant management or any database run by the Department of Criminal Justice Information Systems (DCJIS). The recommended practice is for the court to fax a copy of the warrant to the police department in the municipality where the child lives, where the child attends school and any other police department in a municipality where the child may be located

based on information provided by the petitioner. The statute requires that a summons issue prior to the issuance of a warrant, but there may be reasonable grounds in some circumstances to believe that the child will not appear in response to a summons and that any further delays would present an immediate danger to the physical and emotional well-being of the child. In these circumstances, the court may issue a warrant of custodial protection prior to the issuance of a summons.

The warrant of custodial protection may be issued for any type of child requiring assistance application. Therefore, if there is an open application alleging a child to be a child requiring assistance for any reason other than a runaway, the court may issue the warrant of custodial protection on the open case and does not need to create a new runaway application.

The warrant of custodial protection is valid until the child has been apprehended and brought to court. If the warrant is executed during court hours, the child shall be brought immediately before a judge. If the police take the child into custodial protection after court hours, the police shall follow the process provided for under G.L. c. 119, § 39H. The warrant of custodial protection shall be expunged once the child returns to court.

Subsection (e). The child is not always present at the time of the filing of the application. If the parent is present, probation will usually meet with the parent that day to conduct an initial inquiry to gather general information about the child and family. In some court locations, probation's inquiry with the child may occur on the day of the preliminary hearing or may be scheduled a few days prior to the preliminary hearing. Counsel for the child should be present at probation's inquiry of the child if counsel is available that day.

IV. PRELIMINARY HEARING, (See G.L. c. 119, § 39E)

(a) Purpose. The purpose of the preliminary hearing is for the court to receive the recommendation of the probation officer and decide whether to (1) decline to accept the application because there is no probable cause to believe that the child and family are in need of assistance and dismiss the case, (2) decline to accept the application because the court finds that the child's interests would be best served by informal assistance and refer the child and family, with their consent, to a probation officer for assistance or (3) accept the application for assistance and schedule a fact-finding hearing.

(b) Conduct of Hearing. The preliminary hearing shall be conducted by a judge. The hearing shall be conducted on the record. The child's counsel and the child shall be present at the hearing. The petitioner shall be present and may be represented by counsel. At the hearing the probation officer shall present his recommendation to the court as to whether the best interest of the child require that assistance be given. The child and the petitioner shall have an opportunity to be heard in regard to the recommendation. The court may admit such evidence as it deems relevant and appropriate. The scope of the hearing shall be limited to the issue of whether there is probable cause to believe that the child and family are in need of assistance or whether the child's interest would be best served by informal assistance.

If the court determines that the best interests of the child would not be served by informal assistance and probable cause is found, the court shall accept the application for assistance and schedule a fact finding hearing.

If the court declines to accept the application for assistance because it finds that the interests of the child are best served through informal assistance, the court shall refer the child immediately to informal assistance. The probation officer shall meet with the child and family to schedule an informal assistance meeting.

If probable cause is not found, the court shall decline to accept the application for assistance and dismiss the case. The court shall also order that any records of the case maintained by the court, the clerk, and probation be expunged.

Commentary

Subsection (b). A child who is the subject of the application is entitled to counsel at all hearings, including the preliminary hearing. An indigent parent, legal guardian, or custodian is also entitled to appointment of counsel at any stage of the proceeding where custody is at issue. See G.L. c. 119, § 39F. All parties have the right to be heard. If the issues are not contested at the preliminary hearing and the parties agree to informal assistance or acceptance of the application, the information presented at the preliminary hearing, including that of the probation officer, need not be sworn testimony. If the issues are contested at the preliminary hearing and the court determines that evidence may be presented by the parties at the preliminary hearing, any testimony, including the testimony of the probation officer, shall be taken under oath. Parties seeking the testimony of the probation officer beyond the probation officer's recommendation shall be required to follow the process set forth in Trial Court Rule IX, *Uniform Rules on Subpoenas to Court Officials*. The statute does not require the probation officer to provide a written recommendation, however, if the probation officer does submit a written recommendation, the recommendation shall be shared with the parties prior to the preliminary hearing.

Under G.L. c. 119, § 39E, a judge can order expungement at any point prior to the fact finding hearing occurring. Therefore, the judge may order expungement upon dismissal prior to holding the fact finding hearing even if dismissal occurs on the day of the hearing. A child requiring assistance case that has an expungement order shall be treated as 'non-existent' and may not be used in any court proceeding or released to anyone including the parties without the prior approval of the judge. Information in an expunged case that does not reveal the child and parents' identities may be released and compiled for reporting and statistical purposes. See G.L. c. 119, § 39E. Upon the issuance of an expungement order, the clerk-magistrate shall shred all papers in the case file and keep only a copy of the judge's expungement order. The clerk shall redact the name of the child from the expungement order, place the order in the case file and file the case with the court's closed cases. The probation department is required to expunge all records in its possession related to the child requiring assistance case. The court clinic shall

expunge documents filed with the court in the case. Other clinical records maintained by the court clinic regarding the case need not be destroyed but references to an expunged case shall not be included in any court clinic report filed with the court.

V. TEMPORARY CUSTODY HEARING AND ORDER, (See G.L. c. 119, § 39H)

(a) Issuing a Temporary Custody Order. The court may issue an order placing the child in the temporary custody of the department when the child is alleged to be a child requiring assistance by reason of repeatedly refusing to obey the lawful and reasonable commands of such child's parents, legal guardian or custodian or if the court finds that the child is likely not to appear at the fact finding or disposition hearing. The court may hold an evidentiary hearing prior to issuing the temporary custody order. The scope of the hearing shall be limited to the issue of whether there is a preponderance of the evidence to believe that the child is in need of assistance for reason of repeatedly refusing to obey the lawful and reasonable commands of the child's parents, legal guardian or custodian or that the child is likely not to appear at the fact finding or disposition hearing.

(b) Conduct of Temporary Custody Hearing. The temporary custody hearing shall be conducted by a judge. The hearing shall be conducted on the record. The child's counsel and the child shall be present at the hearing. The parent shall be present and represented by counsel, unless the parent has waived their right to counsel. At the hearing the parent may present evidence to the court regarding the allegations surrounding the application for assistance and the need for a temporary custody order. The court may provide the child the opportunity to present evidence as to why the temporary order should not issue or the child may agree to the issuance of the order. All testimony shall be taken under oath.

(c) Contrary to the Child's Best Interests and Reasonable Efforts Determination. Prior to granting temporary custody to the department, the judge shall make a written certification and determination that it is contrary to the child's best interests to remain in the child's home and that the department has made reasonable efforts to prevent removal of the child from the child's home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of preventative services as an alternative to removal.

(d) Duration of Temporary Custody Order. An order granting temporary custody of the child to the department shall last for no more than 15 days. A temporary custody review hearing shall be held to determine whether the order shall continue for an additional 15 day period. The child and child's parents, all represented by counsel, shall attend the review hearing. If the judge determines by a preponderance of the evidence that the order shall be extended, it may be extended for an additional 15 day period. Following the first extension, the order shall only be extended for one more additional 15 day period following another temporary custody review hearing.

Commentary

Subsection (a). General Law c. 119, § 39H reads as follows: *"If the court finds that a child stated to require assistance by reason of repeatedly refusing to obey the lawful and reasonable commands of such child's parents, legal guardian or custodian or is likely not to appear at the fact finding or disposition hearing, the court may order the child to be released upon such terms and conditions as it determined to be reasonable or…may place the child in the temporary custody of the department of children and families."* The language as written is ambiguous as to when in a proceeding the court may issue a temporary custody order and also whether such order may be issued for any application alleging the child to be a runaway, a truant or failing to obey school regulations. Based on the statutory language, the recommendation is that a temporary custody order may be issued at any time in a proceeding alleging the child to require assistance by reason of refusing to obey the lawful and reasonable commends of such child's parents, legal guardian or custodian. A temporary custody order may only be issued in a proceeding alleging the child to be a runaway, truant or failing to obey school regulations if the court finds by a preponderance of the evidence that the child will likely not appear for the fact finding or disposition hearing. The statutory language seems to contemplate that an issuance of a temporary custody order in those types of proceedings would occur only when a fact finding or disposition hearing is scheduled in the case.

Subsection (b). In 2008, the Supreme Judicial Court held that an indigent parent is entitled to court appointed counsel at the dispositional phase in a child in need of services case (the prior version of a child requiring assistance case) if the court was considering granting custody to the department. See *In Re Hilary*, 450 Mass. 491 (2008). In 2013, G.L. c. 119, § 39F was amended to provide the right to counsel for indigent parents at "any hearing or proceeding regarding custody of such child."

Subsection (c). The reasonable efforts determination shall be made on a form approved by the Chief Justice of the Juvenile Court. General Law c. 119, § 39H does not make reference to G.L. c. 119, 29C. Rather the statute states, that prior to the court granting temporary custody of the child to the Department, *"the court shall make a written certification and determination that it is contrary to the best interests of the child for the child to be in the child's home or current placement and that the department of children and families has made reasonable efforts to prevent removal of the child from the child's home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of preventative services as an alternative to removal."* When entering an order of temporary custody to the Department is only required to address the findings as outlined in § 39H and not those appearing in G.L. c. 119, § 29C as addressed in *Care and Protection of Walt*, 478 Mass. 212 (2017). The court, however, shall schedule a permanency hearing for the child in accordance with Trial Court Rule VI, *Uniform Rules for Permanency Hearings* and G.L. c. 119, § 29B, to be held within 12 months. At every subsequent hearing in the proceeding, the parties shall be informed by the court of the permanency hearing date. See Trial Court Rule VI, Rule 3 (b).

Subsection (d). The temporary custody order may be extended beyond 45 days with the consent of the parent, child and counsel if the court finds that the extension is necessary due to exceptional circumstances where the child may be unavailable or where the continuation beyond 45 days is in the child's best interest.

VI. INFORMAL ASSISTANCE, (See G.L. c. 119, § 39E)

(a) Purpose. The purpose of informal assistance is so the probation officer may refer the child and family to appropriate public or private resources for psychiatric, psychological, educational, occupational, medical, dental or social services. Informal assistance may also be used to help achieve an agreement with the child and the child's family to resolve the situation which formed the basis of the application for assistance.

(b) Length of Informal Assistance. Informal assistance shall not exceed 90 days from the date that the application for assistance was filed with the court. The period of informal assistance may be extended for an additional 90 day period with the written agreement of the child and the child's family. The entire length of informal assistance shall not exceed 180 days from the date of the filing of the application for assistance.

(c) Expiration of Informal Assistance. Upon expiration of the informal assistance period, the case shall be dismissed or scheduled for a fact finding hearing. If the case is dismissed, the court shall order that any records maintained by the court, the clerk and probation be expunged.

(d) Acceptance of Application for Assistance. During the informal assistance period, the child and child's family cannot be ordered to appear at any conferences, produce any papers or visit any places for referrals or services. If the child or child's family fail to participate in good faith in the referrals or conferences arranged by the probation officer, the probation officer shall certify the refusal in writing and the clerk shall accept the application for assistance and set a date for the fact finding hearing.

Commentary

Subsection (a). Informal assistance may occur in a number of different ways depending upon the needs of the child and family and the resources available to the probation department. Though the child and family are not required to provide information or participate in referrals or conferences with service providers, probation can conduct conferences with providers for the family's benefit. The attorney for the child should be involved in the informal assistance process absent an emergency or unless unavailability creates undue delay in the proceeding. No statements made by the child or by any other person during the inquiries, conferences or referrals may be used against the child at any subsequent hearing to determine that the child requires assistance, but such statements may be received by the court after the fact finding hearing for the purpose of disposition. See G.L. c. 119, § 39E.

Subsection (c). The dismissal of the case upon the expiration of informal assistance shall be done on the record by probation before the judge but does not require the presence of the parties in court. Probation shall record the dismissal on the *Probation Officer Certification, JV-089* form approved by the Chief Justice of the Juvenile Court. See *Commentary, IV. Subsection (b)* regarding expungement. When a fact finding hearing is scheduled upon the expiration of informal assistance, the court may allow the child and parent to be heard at the start of the fact finding hearing on whether the fact finding hearing may continue or the case return to informal assistance.

Subsection (d). If the child and parent fail to participate in good faith or attend conferences, probation shall so certify in writing on the *Probation Officer Certification, JV-089,* form and file the form in the clerk's office. Upon receipt of the form, the clerk shall accept the application and schedule for a fact finding hearing. Notice of the hearing shall be sent to the parties and all attorneys of record. The court may allow the child and parent to be heard at the start of the fact finding hearing on whether the fact finding hearing may continue or the case return to informal assistance.

VII. FACT FINDING HEARING, (See G.L. c. 119, § 39G)

(a) Purpose. The purpose of the fact finding hearing is to determine whether the child and the child's family require assistance and, if so, determine the appropriate treatment and services for the child and family, appropriate placement for the child, if necessary and the appropriate conditions and limitations of such placement.

(b) Conduct of Hearing. The fact finding hearing shall be conducted by a judge, on the record. The judge who conducted the preliminary hearing shall not conduct the fact finding hearing. All testimony shall be taken under oath. The presentation of the allegations in the application for assistance shall be presented to the court by the petitioner or the petitioner's counsel.

At the fact finding hearing the petitioner may testify describing the basis for the allegations in the application for assistance. The petitioner may be permitted to present evidence relevant to the issue of the allegations, including any relevant witnesses. Child's counsel may cross-examine the petitioner and the petitioner's witnesses. Child's counsel may present evidence relevant to the issue of the allegations, including any relevant witnesses. The petitioner maybe permitted to cross-examine witnesses produced by child's counsel. In addition, the child may testify on his/her behalf. The petitioner may be allowed to cross-examine the child if the child testifies.

The probation officer shall not present evidence at the fact finding hearing regarding any statements made by the child or any other persons during the inquiry conducted prior to the preliminary hearing, or during the informal assistance period.

The standard of proof at the hearing is beyond a reasonable doubt. After the presentation of evidence, all parties or their counsel may be permitted to make a closing statement.

If the petitioner or petitioner's counsel is not present at the fact finding hearing, the fact finding hearing may be continued to another date in order for the petitioner to appear. If on the next scheduled date the petitioner fails to appear without good cause, the application shall be dismissed. If the application is dismissed without the fact finding hearing being held, the court shall order that any records of the proceeding maintained by the court, the clerk or probation shall be expunged.

(c) Finding Child Requires Assistance. If, the court finds that the statements in the application for assistance have been proven beyond a reasonable doubt after the

conclusion of the fact finding hearing, the court may find that the child requires assistance. If the court finds that the child requires assistance, the court shall schedule a conference to determine the most appropriate disposition for the child and family.

(1) Motion to Dismiss Following Finding that Child Requires Assistance. Any party, including the petitioner, may file a motion to dismiss the application at any time prior to the conference and disposition hearing. The judge may order the application be dismissed upon a showing that the dismissal is in the best interests of the child or if all parties agree to the dismissal.

(d) Dismissal. If after the conclusion of the fact finding hearing, the court finds that the statements in the application for assistance have not been proved beyond a reasonable doubt, the court shall find that the child does not require assistance and dismiss the application

Commentary

Subsection (b). The requirement that the judge who heard the preliminary hearing cannot conduct the fact finding hearing may be waived by the child and counsel.

If the issues are contested at the fact finding hearing, any testimony, including the testimony of the probation officer, shall be taken under oath. Parties seeking the testimony of the probation officer shall be required to follow the process set forth in Trial Court Rule IX, *Uniform Rules on Subpoenas to Court Officials*.

Though beyond a reasonable doubt is the burden of proof at the fact finding hearing, the statute does not require an evidentiary hearing. It is recommended as a best practice that the court conduct an evidentiary hearing and that such hearing allow for the admittance of hearsay evidence. Hearsay is not addressed in the statutes or caselaw but due to the flexible nature of these proceedings, it is recommended that reliable hearsay may be admitted. See *Commonwealth v. Durling*, 407 Mass. 408 (1990).

VIII. CONFERENCE AND DISPOSITION HEARING, (See G.L. c. 119, § 39G)

(a) Purpose. The purpose of the conference and the disposition hearing is for the court to hear from and receive recommendations from the petitioner, the child's parent, the child, probation, and any service providers for the child in order for the court to determine an appropriate disposition for the child.

(b) Scheduling and Notification of Conference. Once the court determines that the child is in need of assistance, the conference and the disposition hearing shall be held as soon as possible.

The conference and the disposition hearing are two separate court events which may be scheduled for the same date at the court's discretion.

(**1) Sending Notice**. The probation officer shall provide the clerk's office with a list of persons who should receive notice of the conference. Parties to the case will automatically receive notice.

(c) Recommendations. The probation officer is required to present a written recommendation to the court on a form approved by the Commissioner of Probation. The recommendation shall advise the judge on the appropriate treatment and services for the child and family, the appropriate placement for the child and the appropriate conditions and limitations of such placement. Others invited to the conference may also present a written recommendation to the court.

In addition to written recommendations, the parties and those invited to the conference, may present an oral recommendation to the court regarding the most appropriate disposition for the child. If the child's attorney has not presented a written or oral recommendation to the court, the court shall inquire after hearing from probation and any others present at the conference, whether the child is in agreement or objects to any of the recommendations.

(d) Disposition Hearing and Order. After the conference has been held, the court shall hold a disposition hearing to review the recommendations presented at the conference. Once the court reviews the recommendations, the court shall make one of the following disposition orders:

(1) Subject to such conditions and limitations as the court may prescribe, including provisions for medical, psychological, psychiatric, educational, occupational, and social services and for supervision by the court clinic or any public or private organization providing counseling or guidance services

(i) Permit the child to remain with his parents, legal guardian or custodian; or

(ii) Place the child in the care of any of the following:

(a) a relative, probation officer, 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;

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

(c) a private organization which, 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

(2) The court may place the child in the custody of the department subject to the provisions of G.L. c. 119, §§ 32, 33 and with such conditions and limitations as the court may recommend.

(e) Duration of Disposition Order. Any order of disposition may continue for not more than 120 days from the date of the issuance of the order. The order may be extended for 3 additional periods, each period not to exceed 90 days. The court shall hold a hearing prior to each extension to determine whether the extension is required because the purposes of the order have not been accomplished and the extension would be reasonably likely to further those purposes.

Commentary

Subsection (b)(1). This subsection is consistent with the guidance provided in Juvenile Court Transmittal 12-201, *Child Requiring Assistance Cases*

Subsection (d)(1). It is a recommended best practice for the disposition order to be in writing. Any written disposition orders shall be issued on a form approved by the Chief Justice of the Juvenile Court.

Subsection (d)(2). When the court orders the child into the custody of the department, the court is required to make the written certification regarding contrary to the best interests and reasonable efforts determination under G.L. c. 119, § 29C. The court may recommend that the department place the child out of the home and the Department is required to implement the court's recommendation as long as the court makes the certification and determination required under § 29C. The certification and determination shall be made on a form approved by the Chief Justice of the Juvenile Court.

Subsection (e). General Law c. 119, § 39G, sets forth a specific time for the duration of the disposition order. There are cases where the purposes of the order have not been accomplished within the 390 day timeframe. In those situations, the petitioner may file a new application for assistance in order to continue services to assist the child and family.

The purpose of the extension hearing is to determine whether the purpose of the disposition order have not been accomplished and that extension of the order would be reasonably likely to further those purposes. "Whether the purposes of the dispositional order have not been accomplished is not determined by the misconduct that gave rise to the ...petition, but by the needs of the child." See *In re Angela*, 445 Mass. 55, 59 (2005). The extension hearing is not a hearing to readjudicate or review the child's conduct but rather to review whether the needs of the child are being met and whether the order requires an extension or modification to meet those needs. Id. at 61.

If the extension of the order may result in an out of home placement or in a commitment to the department, the child is entitled to an evidentiary hearing. Id. at 64. The petitioner bears the burden of proof which is a preponderance of the evidence. Id. at 65. However, it is within the judge's discretion to allow someone else other than the petitioner, such as a probation officer, to prosecute the extension of the dispositional order. Id. at 66.

IX. APPEALS, (See G.L. c. 119, § 39I)

(a) Claim of Appeal. Pursuant to G.L. c. 119, § 39I, a child, parent, legal guardian or custodian may appeal from any order or determination, whether it is a final order or not, at any time in the proceeding. The case may proceed in the Juvenile Court and the judge issue any orders that meet the needs of the child while the appeal is pending. The appeal shall be to a single justice of the Appeals Court pursuant to G.L. c. 231, § 118 and shall follows the rules of regulation for practice before a single justice.

Date: March 10, 2021

Effective Date: April 1, 2021

/s/ Amy L. Nechtem

Hon. Amy L. Nechtem

Chief Justice

Juvenile Court Department