HOUSE DOCKET, NO. 1668 FILED ON: 1/20/2011

HOUSE . . . . . No. 1421

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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:

An Act relative to juvenile mental health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kay Khan	*11th Middlesex*
John P. Fresolo	*16th Worcester*
Cheryl A. Coakley-Rivera	*10th Hampden*
James B. Eldridge	☐ *[District]* ☐
Jennifer L. Flanagan	☐ *[District]* ☐
Peter V. Kocot	*1st Hampshire*
Elizabeth A. Malia	*11th Suffolk*
James J. O'Day	*14th Worcester*
Denise Provost	*27th Middlesex*
Tom Sannicandro	*7th Middlesex*
Carl M. Sciortino, Jr.	*34th Middlesex*
Theodore C. Speliotis	*13th Essex*
Ellen Story	*3rd Hampshire*
Timothy J. Toomey, Jr.	*26th Middlesex*

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HOUSE . . . . . No. 1421

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1421) of Kay Khan, John P. Fresolo and others relative to juvenile mental health and substance abuse. Mental Health and Substance Abuse.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1937* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to juvenile mental health.

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

SECTION 1. (a) The department of mental health in collaboration with the department of youth services and the department of public health is hereby authorized and directed to conduct a comprehensive review of the mental health and substance abuse service needs of adolescents in the care of or detained in the commonwealth through the order of a juvenile court, including without limitation juveniles detained in the department of youth services or in the custody of the department of social services, or receiving services from the department of mental health, the court clinics, probation, or otherwise, and including without limitation any such departments, offices, agencies or instrumentalities of the commonwealth, and any private organizations and agencies operating under arrangement with departments or agencies of the commonwealth. To complete said review, the department of mental health, department of youth services, and department of public health shall solicit input from the office of probation, the department of social services, the department of education, the juvenile court, juvenile court clinics, the committee for public counsel services, the department of mental retardation, the division of insurance, the division of medical assistance, the Massachusetts Association of District Attorneys, at least one individual representing the interests of parents and families, at least one advocate for juvenile justice, at least one representative of a service provider community, and at least one representative from the Massachusetts Association of Health Plans. Said review shall be for purposes of identifying the following:

19 (i) existing and proposed models of alternatives to detention, within and outside the
20 commonwealth, of providing mental health and substance abuse services to juveniles in
21 detention, and as alternatives to detention; community resources and other dependencies which
22 affect the appropriateness and effectiveness of models of alternatives to detention; and data
23 demonstrating the relative efficacy, cost-effectiveness, and effect on public safety of alternative
24 models;

25 (ii) unmet mental health and substance abuse needs of juveniles within the juvenile court
26 systems of the commonwealth, including an explicit comparison of the best practices and models
27 identified in paragraph (a) of this section with services and models available in the
28 commonwealth;

29 (iii) recommendations for addressing unmet needs, including without limitation through
30 the court clinics of the juvenile courts, and through contracting by the department of mental
31 health for community-based services through community providers, or through consortia of
32 community providers, local government agencies and others operating in congruence with local
33 courts involved in the juvenile justice system.

34 (b) Within sixty days after the effective date hereof, the department shall post to its
35 external website, for thirty days public comment, a proposed work plan to gather information
36 necessary to prepare the report required by this section, in consultation with clinical,
37 philanthropic and advocacy organizations for children, and providers of mental health and
38 substance abuse services for minors. The proposed work plan shall be directed to submit a final
39 report to the legislature and the governor no later than two hundred and seventy days after the
40 effective date of this act.

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

43 (d) Within two hundred and ten days after the effective date of this act, the department
44 shall post on its external website, for public comment, a draft report responsive to this section.

45 (e) Within two hundred and seventy days after the effective date of this act, the
46 department shall post on its external website a final report responsive to this section, including a
47 summary of all public comments received, and responses to such comments. The department
48 shall also that day provide a copy of its final report to the governor, the president of the senate,
49 the speaker of the house of representatives, the chairs of the joint committees on mental health
50 and substance abuse, and children and families, and the legislative mental health caucus.

51 SECTION 2. Chapter 119 of the General Laws as appearing in the 2004 Official Edition
52 is hereby amended by inserting after section 68C the following section:

53 68D. The purpose of the "diagnostic assessment" authorized in section 68A, above, is to
54 provide a screening, evaluation and service planning system so as to provide the Juvenile Court
55 with information regarding the needs of juveniles before the Court in delinquency matters, so as
56 to assure the appropriate use of detention, and provide the Court a method for assuring that those
57 juvenile defendants with mental health or substance abuse issues who may be safely maintained
58 in their communities are not detained in locked detention settings during the pendency of
59 delinquency or Youthful Offender proceedings. Evaluation under this section and Section 68A
60 shall require consent of the juvenile defendant's parent or legal guardian and, through the
61 defendant's counsel, the juvenile. Should consent be withdrawn during the period of evaluation,
62 the evaluation shall be suspended until the matter can be brought back before the court.

63 A juvenile may not be held in detention, except as pursuant to chapter 276 sections 58 or
64 58A. Within amounts appropriated by the legislature for these purposes, where the Court is
65 considering an order of detention for evaluation of a juvenile defendant in a locked detention
66 setting pursuant to 68A, the juvenile shall receive on the same court day and prior to issuance of
67 an order of detention a preliminary screening by a juvenile court clinician to make
68 recommendations to the court on matters relevant to the further evaluation of the juvenile; the
69 report to the court regarding the results of this screening shall include a recommendation on
70 whether the evaluation ordered by the Court pursuant to 68A may be completed in a less
71 restrictive environment than a locked facility, and whether the immediate needs of the juvenile
72 warrant further examination for possible hospitalization for clinical care. The Court shall then
73 order the evaluation pursuant to 68A to occur in the least restrictive environment. The report of
74 the screen to the court shall not include statements of self incrimination and shall include only
75 information relevant to the recommendation to be offered to the court regarding the setting for
76 further evaluation. No additional information shall be released without an order from the court,
77 except as to defense counsel.

78 A juvenile shall not be held in a locked detention facility of the Department of Youth
79 Services for 68A evaluation unless the Court makes findings that failure to detain in a locked
80 detention facility would pose a substantial risk of failure to appear for future hearings before the
81 Court on the delinquency or Youthful Offender matter. Unless these findings are made, the Court
82 shall order the 68A evaluation to occur in the least restrictive setting reasonably available
83 including, but not limited to, the Court Clinic or a program to which the youth is assigned as an
84 alternative to a locked detention setting. Orders of recognizance may not be revoked and a
85 juvenile detained in a locked detention facility solely for failure to comply with the 68A
86 examination; provided, however, that once a 68A evaluation is ordered the examiner shall
87 complete the evaluation if so directed by the Court with information from other sources should
88 the juvenile decline interview or other direct participation. Revocation of orders of recognizance
89 or bail and a subsequent order for detention in a locked DYS facility shall occur only upon
90 additional findings by the Court that failure to detain would result in: (a) substantial risk of
91 failure to appear in the delinquency or Youthful Offender matter; or (b) findings of

92 dangerousness made following proceedings in accordance with Ch. 276 sections 58 and 58A.
93 Provided, however, that if a likelihood of serious harm to self or other is by reason of mental
94 illness or substance abuse, the Court shall proceed under the provisions of MGLc. 123, sections
95 12, 15 or 35.

96 The order for further 68A examination following the screening shall specify one or more
97 referral questions for response by the qualified examiner. Defense counsel shall be afforded an
98 opportunity to object to referral questions and to suggest referral questions; provided, however,
99 that forensic examination of Competency to Stand Trial and Criminal Responsibility cannot be
100 ordered as part of a 68A evaluation in lieu of proceedings under Chapter 123, section 15. In
101 addition to the forensic mental health examination by a qualified examiner, the court may also
102 order screenings for substance use.

103 The examiner shall submit within 20 days of the 68A order a written report of the 68A
104 examination to the court and to defense counsel; provided, however, that the examiner may
105 request the court to authorize an additional 20 days if the examination cannot be completed
106 within the first period of 20 days. Upon filing of the report with the court and defense counsel,
107 before the 68A report is provided to the prosecution, probation or any other person or entity, the
108 juvenile's counsel shall be afforded an opportunity for prior review of the report and to request a
109 hearing before the court should defense counsel want to request of the court that portions of the
110 report be redacted or subject to protective order as being privileged, not material to or otherwise
111 admissible in the instant proceeding, before a copy is provided to the prosecution. Further release
112 of the 68A examination report beyond the Juvenile Court, Probation, defense counsel, the
113 prosecution, and the parents or legal guardian of the juvenile shall require an order of the
114 Juvenile Court identifying the persons or entities to receive copies of the report and the purpose
115 for which the report is being released by the Court.

116 Whether conducted while in a locked DYS detention facility or a less restricting setting,
117 the 68A examination report shall offer responses to the referral questions and be sufficient to
118 identify such services as might be required to meet the mental health and substance abuse needs
119 of the juvenile during the pendency of the delinquency or Youthful Offender proceedings. The
120 report of the 68A examination shall include recommendations regarding what, if any, mental
121 health, substance abuse, child protection, educational or other services the juvenile may require
122 to be maintained in the community during the pendency of the delinquency or Youthful Offender
123 proceedings and needed for ongoing care, intervention or treatment. The examiner shall not
124 inquire about open or uncharged delinquency or Youthful Offender charges without prior
125 authorization to do so by defense counsel for the juvenile.

126 Upon review of the 68A examination report and the recommendations of the examiner,
127 the court may consider the report in determining an alternative to detention under Section 68 of
128 this Chapter. On motion of counsel for the juvenile, or in the court's own discretion, the court
129 may refer the child to the Department of Mental Health or other relevant state agency for the

130 receipt of services as an alternative to detention in a locked DYS setting, subject to the child's
131 substantial compliance with the terms of the interim service plan authorized by the court during
132 the proceedings if necessary to assure the child's appearance in court. No information obtained
133 in the course of the 68A screening, 68A examination or the provision of services subsequently
134 recommended and ordered by the court may be introduced as a confession by the juvenile nor
135 used in the prosecution of the case in chief, or any other proceeding, against the juvenile
136 defendant, nor may any of the information be used in disposition unless some part of the report is
137 first offered by counsel for the juvenile

138 When conducted and other than a DYS operated setting and within amounts appropriated
139 therefore by the legislature, the Department of Mental Health or other relevant state agency, or
140 qualified provider of mental health, substance abuse or other services acting under arrangement
141 with the Department or other relevant state agency, shall within 24 hours of referral from the
142 Juvenile Court begin to formulate and implement a care and intervention plan. This plan shall
143 include as relevant to each case a plan for the coordination of mental health, substance abuse,
144 educational, social service and other service providers, and where to place the juvenile until said
145 court date. This coordination plan shall include designation of a case manager or other
146 appropriate care coordination mechanism, services to address the child's mental health and
147 substance abuse service needs, and a mechanism to report on the juvenile's progress and the
148 effective collaboration of state agencies, educational authorities, service providers, and others
149 contributing to meeting the clinical care needs of the child for so long as the juvenile is the
150 subject of Juvenile Court proceedings.

151 Nothing in this chapter shall preempt the presumption of personal recognizance or any of
152 the requirements of sections 58 and 58A of chapter 276.

153 SECTION 3. Chapter 123 of the General Laws as so appearing is hereby amended by
154 inserting after section 16 the following section:--

155 16A. Alternatives to detention for minors in juvenile justice proceedings

156 (a) Within amounts appropriated therefore, the department shall contract with eligible
157 providers of mental health services for provision of adequate and effective mental health and
158 substance abuse services for minors referred for evaluation and services pursuant to sections 68D
159 of chapter 119 of the General Laws, for whom the provision of mental health and substance
160 abuse services, delivered in a timely and appropriate manner in an outpatient or inpatient setting,
161 would ameliorate mental health or substance abuse needs and, as ordered by the court, dispense
162 with the need for detention in a facility under the direction of the department of youth services or
163 otherwise.

164 (b) For purposes of this section, "eligible providers" shall mean appropriately qualified
165 residential and non-residential providers of pediatric mental health services; local government
166 mental health agencies or authorities; or local or regional consortia of such providers, agencies or

167 authorities, operating within cooperative arrangements with, as the case may be, local offices of
168 probation, law enforcement, community health organizations, or public health agencies, and
169 court-associated clinic services. Such consortia may allocate diagnostic and therapeutic services
170 among them in a locally or regionally appropriate and effective manner, provided that the
171 evaluation and services for a given juvenile will be managed by a continuously dedicated case
172 manager and, in the department's judgment, that the networked allocation of evaluation and
173 services will be as or more effective than competing applications for the same region or locality.
174 Eligible providers shall also be equipped to provide academic and recreational services as
175 necessary and appropriate for the service needs of youth referred to them. Eligibility criteria for
176 services shall be established by the department of mental health in consultation with the Juvenile
177 Mental and Behavioral Health Coordinating Committee, established by this section.

178 (c)The department(s) shall engage sufficient numbers of qualified providers, sufficiently
179 distributed within the state, to timely meet the mental health service needs of minors referred by
180 the court for evaluation, assessment, and services pursuant to section 68D of chapter 119 of the
181 General Laws.

182 (d) To implement the requirements of this section, the department shall within 60 days
183 after the effective date of this act, and within 60 days after the effective date of any subsequent
184 appropriation directed to this purpose in any fiscal year other than appropriations directed to the
185 continuation of previous contracts, issue and disseminate, including posting on its external
186 website, a draft request for information, or request for proposals as the case may be, for public
187 comment. Thirty days thereafter, the department shall close the public comment period, and no
188 later than ninety days thereafter issue a request for information or proposals, as the case may be,
189 soliciting contracting proposals under this section. Before issuing the draft request for
190 information, or proposals as the case may be, the department shall consult with and seek
191 comment from pertinent departments of the commonwealth, and pertinent providers, agencies,
192 authorities and associations involved with the provision of pediatric mental health and substance
193 abuse services, or the juvenile justice system, or advocacy for children, including at least the
194 following, which the department shall seek to assemble and constitute in a continuing advisory
195 capacity denominated the juvenile mental and behavioral health coordinating committee: the
196 chief of probation, the chief justice of the juvenile court, the commissioner of public health, the
197 commissioner of social services, the commissioner of youth services, the commissioner of
198 education, the commissioner of early education, the commissioner of mental retardation, the
199 commissioner of insurance, the director of the division of medical assistance, one representative
200 of court clinic services, one representative from the committee for public counsel services, one
201 representative from the Massachusetts Association of District Attorneys, one individual
202 representing the interests of parents and families, one advocate for juvenile justice, one
203 representative of the service provider community, and one representative from the Massachusetts
204 Association of Health Plans.

205 (e) Proposals shall be solicited and evaluated by the department based on the criteria
206 established in consultation with the juvenile mental and behavioral health coordinating
207 committee. Successful applicants shall be required to have demonstrated that they will timely
208 provide appropriate mental health and substance abuse services that, based on data submitted
209 with their proposal, are reasonably anticipated to reduce the necessity of detention in facilities
210 operated by or under the authority of the department of youth services through diagnosis and
211 treatment of the juveniles' mental health and substance service needs. Proposals shall address all
212 matters required under section 68D of chapter 119 of the General Laws. The department shall
213 also require applicants to identify the extent to which they have provided for local input from and
214 coordination with local and regional government agencies and authorities, community
215 organizations, and philanthropic organizations concerned with mental health services for minors,
216 and community safety.

217 (f) The department shall annually report to the governor, the president of the senate, the
218 speaker of the house of representatives, the joint committee on mental health and substance
219 abuse, the joint committee on children and families and the legislative mental health caucus on
220 its compliance with this section, including the extent to which actions taken by the department,
221 or contractors under this section, have failed to comply with the requirements of this section, and
222 have not addressed all needs for such mental health and substance abuse services. The report
223 shall also include the department's efforts to demonstrate the effectiveness of such programs on
224 reducing detention in other facilities in the commonwealth not under the jurisdiction of the
225 department while maintaining the public safety. The report shall further include the impact that
226 the implementation of section 68D has on the department's other responsibilities with regard to
227 forensic mental health services, including but not limited to the impact on the juvenile court
228 clinics, and the impact of said implementation on the daily census of detained youth in the
229 department of youth services. The report shall be publicly available, and shall be posted by the
230 department on its external website.

231 SECTION 4. Upon approval by the legislature and subject to appropriation, the procedure
232 for screening and 68A evaluation shall be implemented as a pilot in the Springfield Juvenile
233 Court for a period of eighteen months. At the conclusion of the eighteen month pilot, a joint
234 report from the Department of Mental Health, Department of Youth Services and the Committee
235 for Public Counsel Services shall be submitted to the Secretary of the Executive Office of Health
236 and Human Services, the Legislature and the Chief Justice of the Juvenile Court reporting on the
237 outcome of the pilot implementation and any recommendations. Upon filing of the report, further
238 statewide implementation of the statute shall be stayed until authorizing legislation is passed.