SENATE DOCKET, NO. 210 FILED ON: 1/18/2011

SENATE . . . . . No. 978

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

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:
Gale D. Candaras	☐ *[District]* ☐
Cory Atkins	*14th Middlesex*
Ellen Story	*3rd Hampshire*
Timothy J. Toomey, Jr.	*26th Middlesex*
Benjamin Swan	*11th Hampden*

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SENATE . . . . . No. 978

By Ms. Candaras, petition (accompanied by bill, Senate, No. 978) of Toomey, Swan, Story and other members of the General Court for legislation relative to juvenile mental health [Joint Committee on Mental Health and Substance Abuse].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *733* 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
20 and outside the commonwealth, of providing mental health and substance abuse services to
21 juveniles in detention, and as alternatives to detention; community resources and other
22 dependencies which affect the appropriateness and effectiveness of models of alternatives to
23 detention; and data demonstrating the relative efficacy, cost-effectiveness, and effect on public
24 safety of alternative models;

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

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

34 (b) Within sixty days after the effective date hereof, the department shall post
35 to its external website, for thirty days public comment, a proposed workplan to gather
36 information 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 workplan 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
42 post its final workplan on its external website.

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

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

52 SECTION 2. Chapter 119 of the General Laws as appearing in the 2008
53 Official Edition is hereby amended by inserting after section 68C the following section:

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

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

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

93 dangerousness made following proceedings in accordance with Ch. 276 sections 58 and 58A.
94 Provided, however, that if a likelihood of serious harm to self or other is by reason of mental
95 illness or substance abuse, the Court shall proceed under the provisions of MGL c. 123, sections
96 12, 15 or 35.

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

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

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

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

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

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

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

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

156 16A. Alternatives to detention for minors in juvenile justice proceedings

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

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

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

179 (c)The department(s) shall engage sufficient numbers of qualified providers,
180 sufficiently distributed within the state, to timely meet the mental health service needs of minors
181 referred by the court for evaluation, assessment, and services pursuant to section 68D of chapter
182 119 of the General Laws.

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

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

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

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