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SENATE . . . . . No. 68

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

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

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

1.Whereas families in the Commonwealth whose children are truant, runaway and acting in a fashion that interferes with their parent's ability to adequately care for and protect said children are families in crisis; and Whereas the issues facing said children and families are complex and the services which would best assist such families are not always available from a single agency or department of the Commonwealth and the collaboration among multiple public and private agencies and offices is required to ensure that all children and families receive the services they need to succeed; and Whereas the current efforts to help said children and families lack accountability and consistency; and Whereas services are not consistently available in all communities; Therefore, it shall be the policy of the Commonwealth to develop a flexible, consistent, and accountable system of community-based programs to assist said children and families.

2. It is the intent of the General Court to create an accountable, community-based system that provides consistent services throughout the Commonwealth to address the needs of families and children in crisis by providing them with an array of resources. The goal of said system is to preserve and strengthen families while ensuring the healthy emotional, mental, and social development of the child. These services shall focus on creating a stable environment and strengthening the family as a whole while emphasizing parental responsibility. Said community-based system shall provide the family and child with immediate responses for the stabilization of the family, as well as to connect the family to additional services in the community through referrals and advocacy. The services provided to the families and children involved shall be provided on a continuum of increasing intensity with the goal of keeping the child out of the juvenile justice and child protection systems. The system shall include a mechanism for the collection and analysis of information which will enable the Commonwealth to evaluate the effectiveness of services and to identify gaps in services. It is the intent of the General Court to reserve judicial intervention for those children and families who require services beyond said community-based services in order to achieve stabilization and resolution.3. For the purpose of this Section the following words shall have the following meanings:‘Child requiring assistance’: a child between the ages of 6 and 18 who repeatedly runs away from the home of his parents or legal guardian or repeatedly fails to obey the lawful and reasonable commands of his parents or legal guardian, thereby interfering with said parent’s or legal guardian’s ability to adequately care for and protect said child or repeatedly fails to obey the lawful and reasonable regulations of his school or who is habitually truant;

“Community Service Agency”: a community-based organization providing services under contract with the Commonwealth, whose function is to facilitate access to and ensure

coordination of services for families with children with serious emotional disturbance who require or are already utilizing multiple services, or are involved with multiple child-serving systems including, but not limited to, the juvenile justice system, department of mental health, and special education, as agreed upon under the settlement dated August 29, 2006 entered into by the parties of Rosie D. et al v. Romney civil action No. 01-30199-MAP filed in the United States District Court.

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

'Habitually truant': a child between the ages of 6 and 18 not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school who fails to attend school for more than 8 school days in a quarter;'Secretary': the secretary of the Executive Office of Health and Human Services.

4. (a) The secretary, in consultation with the Commissioner of the Department of Children and Families, the Commissioner of the Department of Youth Services and the Commissioner of the Department of Mental Health, shall establish a network of child and family service programs throughout the Commonwealth to provide community-based services to all children and families who are at risk of contact with the juvenile justice system or the child protection system, families with children requiring assistance, and children who require assistance. The secretary shall enter into contracts with the Community Service Agencies (CSAs) who shall act as Community-Based Service Centers, to implement the program and

provide services which are within their capacity. The Community-Based Service Centers shall be permitted, subject to approval by the Secretary, to subcontract with other local providers as needed to provide the full complement of services required under paragraph 8 of this section.

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

(i) design models for delivery of community-based services by community-based organizations and collaborations of public and private organizations; (ii) pilot alternative systems to address the problem of children running away from their parents or legal guardians; (iii) develop standards necessary to achieve and maintain on a statewide basis comprehensive and integrated community-based services for children and families; (iv) monitor and provide technical assistance to providers of community-based services; (v) adopt a standard intake screening and assessment tool to evaluate all families and children seeking community-based services which identifies the family's strengths, resources, and service needs such as mental health, behavioral health, or substance abuse treatment, basic family shelter, clothing and food needs, child care needs, health insurance status, legal issues, education placement, and child protection;(vi) create a data collection system for use by programs which maintains the privacy of clients served, assists programs and the executive office of health and human services in addressing the needs of the population to be served, collects information related to, among other

things, the insurance status and benefit coverage of clients served, income documentation as needed to apply a sliding fee scale for payment or waiver of payment for services, and other information that may assist the program and the secretary in providing services, identifying service needs and gaps, and evaluating the effectiveness of community-based services.

5. (a) Subject to appropriation, the secretary shall make grants for the purpose of planning, establishing, operating, coordinating, and evaluating centers, which will provide community-based services. At least one grant shall be awarded for the operation of a community-based services program in each of the 29 Department of Children and Families service areas. Additionally, two grants shall be awarded for runaway treatment and prevention programs, one in an urban location and one in a rural location. Grants may award funding for up to five years subject to demonstration of effectiveness and the submission of annual reports to the secretary.(b) Preference in awarding the grants shall be given to the CSA for the service area wherever the experience and resources of the CSA will promote efficiency and increased access to services. In circumstances where, in the judgment of the secretary, the CSA is not the appropriate selection for the Community-Based Services Center, proposals may be submitted by a local school or other local public agency or private organization or medical or mental health care providers.

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

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

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

6. (a) Community-based services shall be available to children between the ages of 6 and 18 who are habitually truant or children between the ages of 6 and 18 who run away from the home of their parents or legal guardian or refuse to obey the lawful rules of their parents or legal guardian or repeatedly fail to obey school rules and to families whose children engage in such behaviors. (b) Whenever the staff of the program offering community-based services determines that a family seeking or referred for services for a child has significant and complex medical needs which cannot be met by the program or where the child's behavior presents a significant

risk of harm to the child himself, the family or the community, the child and family shall be referred to other services pursuant to paragraph 5 of this section.(c) Where a youth has been charged with a delinquency offense or is an adjudicated delinquent, eligibility for participation in community-based services shall be determined by the program administrator after a review of the facts surrounding the offense by a team consisting of: a community-based services caseworker, probation officer, family members and the counsel representing the child in the delinquency matter.(d) Where the child is in the custody of the department of children and families and residing in an out-of-home placement, eligibility for participation in community-based services shall be determined by the program administrator after a review of the facts surrounding the placement by a team consisting of the community-based services caseworker, the department of children and families caseworker, a responsible adult with whom the child has an ongoing connection, and any counsel representing the child in the matter of placement and custody.(e) Where a child or family is denied access to community-based services for reasons other than those described in this section, the program shall provide a written explanation of reasons for exclusion and the identification of other community-based services and resources available to them.(f) When a child or family is denied services pursuant to this section, the program shall contact the family in person or by telephone within two weeks after the denial decision to determine if the other appropriate services have been obtained and whether or not community-based services are now appropriate. The program shall provide to the family and child a notice in a form acceptable to the juvenile court stating that the family is not eligible for community-based services and listing the reasons for ineligibility.

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

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

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

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

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

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

(i) program representatives available to respond to requests for service 24 hours a day, 7 days a week;(ii) initial response to referral or request for services by a family or child, which includes a meeting to determine the circumstances which resulted in the request or referral within six hours of contact;(iii) a plan for stabilization of any crisis, which initiated the referral or request within a reasonable time;(iv) assessment and screening of each person requesting services and, if possible, all family members residing in the household using the standard intake

tool as established by the secretary pursuant to paragraph 4(c)(v) within seventy-two hours of the referral or request. The person conducting the assessment and screening must note the reasons why any family member was not screened within seventy-two hours of the initial request and must complete the screening process for all family members residing in the household within one week of the initial referral;(v) assignment of a case manager to each family upon assessment;(vi) creation of a family service plan within ten working days from initial contact, which includes: strength-based assessment and statement of family needs presented; needs of the child; needs of the parents, legal guardian or legal custodian; measurable objectives that address the identified needs; services and treatment to be provided by the community-based services program or to which the family and child will be referred, which may include but are not limited to: community, medical, mental health and behavioral health services, assistance with obtaining special education evaluation and services and remedial education services, assistance with insurance coverage issues; recreational services; mediation and family group conferencing. For each service or treatment included, the plan shall contain a statement clearly identifying the type of services or treatment, frequency of services or treatment, location of responsible service providers or staff, and timeframes for achieving the plan objectives. The service plan shall be reviewed and agreed upon by the family before implementation;(vii) periodic review of the family service plan by the case manager and the family to determine whether it is being followed and if it is effective;(viii) intensive crisis counseling for both children and families; (ix) parent training in appropriate skill areas directly related to the needs of the family;(x) data collection in a format as required by the secretary for each referral or request, which protects the privacy of the individuals seeking services while providing a means to insure that information necessary to optimize the likelihood of successful outcome for each person seeking services and to permit the

evaluation of the effectiveness of the program;(xi) compilation and dissemination to the general public of information about family support resources and services available in the community; (xii) crisis intervention residential placements for children for up to 72 hours; (xiii) voluntary respite residential placement of the child for up to 21 days; and (xiv) mediation or alternative dispute resolution. (xv) The program shall make available to the public information that identifies a variety of community-based educational, social, medical, mental health and behavioral health services available to assist families and children.

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

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

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

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

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

10. (a) Each family shall have a case manager who shall be responsible for working with the family to develop a crisis stabilization plan where warranted and a family service plan; coordinating services; assisting the family to resolve administrative issues including issues with insurance coverage, interagency issues and other issues which serve as barriers to successful implementation of the service plan; facilitating communication between providers as authorized by the child or their parent or legal guardian; implementing resolution processes when necessary; and working with the case staffing team to create an after care plan.

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

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

(d) The case manager shall, in consultation with the family, develop a family service plan which shall be provided to the child and their parent or legal guardian and other family members requiring assistance who are involved in the plan within ten days of the initial referral. Upon receipt of the plan, the child and each family member named in the plan shall accept or reject the services and provisions in writing. Each service provider identified in the plan shall also accept or reject their participation in writing. If the plan is accepted, it shall be implemented immediately. If the child or family is not in agreement with the plan and attempts by the case manager to develop an alternative plan are unsuccessful or when the services required are not available, the child, their parent or guardian or the case manager may request review by the service engagement team who shall assist the case manager, child and family in developing an alternative plan.

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

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

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

(i) the family or child is not in agreement with the services or treatment offered; or(ii) the family or child does not participate in the services or treatment selected; or(iii) a school state

agency or private service provider does not provide the services or treatment selected; or (iv) the case manager needs assistance in developing an appropriate plan for the provision and funding of services; or(v) there is cause to believe that continuation of services is no longer appropriate because the child has complex medical needs which cannot be met by the program or where the child's behavior presents a significant risk of harm to the child himself the family or the community.

(g) The parent or legal guardian or child who is over the age of 16 or any other member of the case staffing team may make a written request that the case manager convenes a resolution meeting at any time if the member finds that doing so is in the best interest of the family or child. A resolution meeting requested by a parent or legal guardian or child who is over the age of 16 must be convened within 7 working days from the date that the case manager receives the request in writing. 11. (a) Not more than 110 days after the assessment and screening of a child and family referred to or requesting community-based services, or 10 days prior to any extension of services granted under paragraphs c and d of this section, the case manager shall convene a resolution meeting with the case staffing team to assess whether the goals of the family service plan have been achieved or if further services are in the best interest of the family and child. After the meeting the case manager shall document the resolution of the case as follows:

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

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

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

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

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

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

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

(d) If the family was referred to community-based services by a court or a probation officer, then services may be extended for additional 90 day periods at the request of the court or probation officer.12. (a) The report and any documentation of services provided to the family and child shall not be public records. Statements made by the family and child while receiving services from the program shall be treated as confidential. Such statements may not be used in school disciplinary proceedings and may not be admitted into evidence in any court proceeding arising from the circumstances which brought the family and child to the program unless the child and family waive their privilege or unless a court finds that such inadmissibility would result in substantial harm to the child.

(b) Any person offering community-based services to children under this program shall be required to report suspected physical or emotional abuse or neglect of a child pursuant to General Laws Chapter 119 Section 51A.(c) Not withstanding any provision to the contrary, in

the absence of specific written directive from the child and or member of the family who is receiving service, information about the case, including interactions with service providers and protected health information services, may be shared among members of the case team as needed to coordinate treatment and provide appropriate case management.13. There shall be an advisory council appointed by the secretary, which shall advise the secretary on creation, operation, and effectiveness of the community-based services program. Members shall include the commissioners or their designees of the departments of public health, mental health, developmental services, children and families, youth services, transitional assistance, elementary and secondary education and public safety, the director of the office of Medicaid or his designee, the commissioner of probation or his designee, the chief justice of the juvenile court or his designee, a district attorney, members of the bar who represent children in juvenile court proceedings, a designee of the committee on public counsel services, an education advocate, representatives of urban, suburban, and rural municipal police departments and school districts, providers of service to children and families, parents, and at least 2 young adults who have participated in a community-based services program.14. The secretary shall report annually on February 1 to the joint committee on children, families and persons with disabilities and the house and senate committees on ways and means and the child advocate on the progress of the community-based services program.

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

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

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

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

Section 1P

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

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

Section 39K. Definitions

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

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

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

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

"Parent", includes a legal guardian or other person legally responsible for a child's care.

Section 39L. Jurisdiction

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

Section 39M. Nature of the Proceedings

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

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

Section 39N. Request for Assistance

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

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

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

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

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

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

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

(e) that the child and family require assistance.

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

(a) a police officer;

(b) a parent;

(c) a school district;

3. The petitioner shall attach to the request for assistance the notice of termination of community-based services as provided for in chapter 6A, section 16H(11)(b) or notice of ineligibility as provided for in chapter 6A, section 16H(e). Except as provided below, the clerk shall not accept for filing any request for assistance that does not have attached thereto said notice of termination or ineligibility. Any person or agency seeking to file a request for assistance pursuant to this section which does not have attached thereto the notice of termination of community-based services shall be referred by the clerk of the court to the program designated by the secretary of the executive office of health and human services to provide community-based services in the juvenile court district where the child resides. If the petitioner is a police officer, the clerk may accept a written statement of the reasons for the officer's belief that the referral to community-based services prior to filing the request for assistance would present a risk of harm to the child or others in lieu of the notice of termination or ineligibility. The clerk shall then immediately contact the designated community-based services to provide notice that a request for assistance has been filed. If the petitioner is a parent, then the clerk may accept a written statement of the parents' reasons for the parents' belief that referral to community based services prior to filing the request for assistance would present a risk of significant harm to the child, family or community. The court shall then immediately review the request for assistance and if the court finds that referral of the family and child to community based services is likely to result in said harm, then the court shall order the creation of a docket for the matter and assign a probation officer to conduct an immediate inquiry and report to the court with advice on how to proceed to obtain assistance for the child.

Section 39O Notice

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

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

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

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

Section 39P Scheduling the Fact Finding Hearing

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

Section 39Q Appointment of Counsel

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

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

3. The court shall determine whether the parent or legal guardian of a child alleged to require assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the court shall assess a $300 fee against the parent or legal guardian to pay for the cost of counsel appointed for the child. If the parent or legal guardian is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent or legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child.

Section 39R Preliminary Inquiry by Probation

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

The probation officer in his discretion may:

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

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

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

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

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

(b) The Commissioner of Probation shall establish a data collection system for use by probation officers assisting children pursuant to sections 39K through 39X which maintains the

privacy of clients served, assists the court in addressing the needs of the population to be served, collects information related to, among other things the insurance status and coverage of clients served, and other information that may assist the commissioner and the court in evaluating the availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

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

3. Conferences and referrals arranged under this section may extend for a period not to exceed 90 days from the date that the request for assistance was filed, unless the parent, child and petitioner voluntarily agree in writing to a continuation of such conferences or referrals for an additional period not to exceed 90 days from the expiration of the original period. Upon the expiration of the initial 90 day period, or of such additional 90 day period, the request for assistance may be dismissed and the child and his parents discharged from any further obligation to participate in such conferences and referrals, or a fact finding hearing shall be held.

Section 39S Custody, Failure to Appear

If, after a hearing at which the child is represented by counsel, the court finds that a child alleged to require assistance by reason of repeatedly failing to obey the lawful and reasonable

commands of his parent is likely not to appear at the fact finding hearing or at the disposition hearing, the court may place the child in the temporary custody of the Department of Children and Families.

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

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

Section 39T Withdrawal of Request for Assistance

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

Section 39U Fact Finding Hearing

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

2. At the fact finding hearing the court shall review any notice of termination of community-based services. The court shall consider any available documentation of diligent

attempts to provide appropriate services and determine whether such efforts or services provided were sufficient. With the consent of the parent(s) and child the court may consider any written reports from service providers which would otherwise be subject to confidentiality or privilege.

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

3. The court shall either:

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

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

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

4. No statements made by a child, family member, or by any other person during the period of inquiries, conferences, or referrals may be admitted at the fact finding hearing without

the consent of the child or family member who made the statement, but may be received by the court at the hearing for disposition

Section 39V Disposition Hearing

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

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

(a) subject to any conditions and limitations the court may prescribe, including provision for medical, psychological, psychiatric, educational, occupational and social services, and for

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

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

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

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

(iii) 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.

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

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

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

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

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

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

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

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

Section 39W Duration of Assistance

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

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

Section 39X. Custodial Protection

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

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

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

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

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

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

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

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

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

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

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

SECTION 5

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

SECTION 6

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

SECTION 7

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

SECTION 8.

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

SECTION 9.

Chapter 741 of the Acts of 1965 is herby amended by striking out, in line 4 of the second paragraph, the word “sixteen” and inserting in place thereof the following word:- eighteen