

**SENATE . . . . . No. 733**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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:*

1           SECTION 1. (a) The department of mental health in collaboration with the department  
2 of youth services and the department of public health is hereby authorized and directed to  
3 conduct a comprehensive review of the mental health and substance abuse service needs of  
4 adolescents in the care of or detained in the commonwealth through the order of a juvenile court,  
5 including without limitation juveniles detained in the department of youth services or in the  
6 custody of the department of social services, or receiving services from the department of mental  
7 health, the court clinics, probation, or otherwise, and including without limitation any such  
8 departments, offices, agencies or instrumentalities of the commonwealth, and any private  
9 organizations and agencies operating under arrangement with departments or agencies of the  
10 commonwealth. To complete said review, the department of mental health, department of youth  
11 services, and department of public health shall solicit input from the office of probation, the  
12 department of social services, the department of education, the juvenile court, juvenile court  
13 clinics, the committee for public counsel services, the department of mental retardation, the  
14 division of insurance, the division of medical assistance, the Massachusetts Association of

15 District Attorneys, at least one individual representing the interests of parents and families, at  
16 least one advocate for juvenile justice, at least one representative of a service provider  
17 community, and at least one representative from the Massachusetts Association of Health Plans.

18 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 workplan 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 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 post its  
42 final workplan 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

82 Court 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  
112 release 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 nor any  
152 of 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  
174 locality. Eligible providers shall also be equipped to provide academic and recreational services  
175 as necessary and appropriate for the service needs of youth referred to them. Eligibility criteria  
176 for services shall be established by the department of mental health in consultation with the  
177 Juvenile 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  
212 all matters required under section 68D of chapter 119 of the General Laws. The department  
213 shall also require applicants to identify the extent to which they have provided for local input  
214 from and 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  
232 procedure for screening and 68A evaluation shall be implemented as a pilot in the Springfield  
233 Juvenile Court for a period of eighteen months. At the conclusion of the eighteen month pilot, a  
234 joint report from the Department of Mental Health, Department of Youth Services and the  
235 Committee for Public Counsel Services shall be submitted to the Secretary of the Executive  
236 Office of Health and Human Services, the Legislature and the Chief Justice of the Juvenile Court  
237 reporting on the outcome of the pilot implementation and any recommendations. Upon filing of  
238 the report, further statewide implementation of the statute shall be stayed until authorizing  
239 legislation is passed.