

**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 adoption of the accompanying bill:

An Act relative to juvenile mental health..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Gale D. Candaras</i>	
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

**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**

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

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  
2 department of youth services and the department of public health is hereby authorized and  
3 directed to conduct a comprehensive review of the mental health and substance abuse service  
4 needs of adolescents in the care of or detained in the commonwealth through the order of a  
5 juvenile court, including without limitation juveniles detained in the department of youth  
6 services or in the custody of the department of social services, or receiving services from the  
7 department of mental health, the court clinics, probation, or otherwise, and including without  
8 limitation any such departments, offices, agencies or instrumentalities of the commonwealth, and  
9 any private organizations and agencies operating under arrangement with departments or  
10 agencies of the commonwealth. To complete said review, the department of mental health,  
11 department of youth services, and department of public health shall solicit input from the office

12 of probation, the department of social services, the department of education, the juvenile court,  
13 juvenile court clinics, the committee for public counsel services, the department of mental  
14 retardation, the division of insurance, the division of medical assistance, the Massachusetts  
15 Association of District Attorneys, at least one individual representing the interests of parents and  
16 families, at least one advocate for juvenile justice, at least one representative of a service  
17 provider community, and at least one representative from the Massachusetts Association of  
18 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.