

SENATE No. 29

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 to promote child well-being, community supervision and efficient use of state resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>1/31/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/2/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>2/3/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>3/2/2017</i>

SENATE No. 29

By Ms. Creem, a petition (accompanied by bill, Senate, No. 29) of Cynthia S. Creem, Patricia D. Jehlen, Marjorie C. Decker, Kay Khan and other members of the General Court for legislation to promote child well-being, community supervision and efficient use of state resources. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote child well-being, community supervision and efficient use of state resources.

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. Chapter 119 of the General Laws, as so appearing, is hereby amended by
2 inserting after section 85 the following new sections:-

3 Section 86. The following words, as used in the following sections, except as otherwise
4 provided, shall have the following meanings:—

5 “Assessment”, a thorough and complete measurement of the needs of a child in, but not
6 limited to, the following areas: education, vocational training, job readiness, housing, behavioral
7 and physical health, family and social services, and an analysis of a child’s willingness to
8 participate in a diversion program.

9 “Official designee”, a representative of a community program who has been approved by
10 the presiding justice of a juvenile court to work in conjunction with that court’s probation office
11 to screen children who may be eligible for diversion.

12 “Program”, any program of community supervision and services certified or approved by
13 the commissioner of probation under the provisions of section ninety-three, including, but not
14 limited to, medical, educational, vocational, social and psychological services, corrective and
15 preventive guidance, training, performance of community service work, counseling, and other
16 rehabilitative services designed to protect the public and benefit the individual.

17 Section 87. The juvenile court shall have jurisdiction to divert from further court
18 processing any child who is subject to the jurisdiction of the juvenile court as the result of a
19 complaint or indictment brought under Section 54 of this Chapter, and who has received a
20 recommendation from the Department of Probation or a Program, as described in Section 89, that
21 diversion to the community or a Program is appropriate.

22 Section 88. The probation officer of a juvenile court shall, after the appointment of
23 counsel and upon the request of counsel, and prior to arraignment, complete an Assessment of
24 each child complained of as a delinquent child or youthful offender for the purpose of enabling
25 the judge to consider the suitability of the child for diversion from any further court processing,
26 for diversion to the community or to a Program prior to arraignment. The Department of
27 Probation shall, in consultation with the advisory board at Section 94, implement a validated tool
28 to conduct such Assessment that is research-based and aligned with best practices in the field.

29 If the child or the probation officer requests it, the court may offer a continuance of up to
30 fourteen-days to allow for additional time for the Assessment by the Department of Probation or,
31 where the judge determines it is appropriate, the personnel of a Program to determine if the child
32 would benefit from such program. If such a continuance is granted, the judge shall direct the

33 child to the probation officer for further assessment or, where applicable, to a Program for such
34 assessment, and shall inform said probation officer or Program of such action.

35 If a case is continued under this section, the child shall not be arraigned and no entry will
36 be made into the CORI systems until such time as a Justice of the Juvenile Court so orders for
37 the purposes of resuming the ordinary processing of a delinquency or youthful offender
38 proceeding.

39 Section 89. After the completion of the Assessment, or upon the expiration of a
40 continuance granted pursuant to section 88, the probation officer or, where applicable, the
41 director of a Program to which the child has been referred, shall submit to the court a
42 recommendation as to whether the child would benefit from diversion to the community or a
43 Program.

44 The judge, upon receipt of the recommendation, shall provide an opportunity for a
45 recommendation by the prosecution regarding the diversion of the child. After receiving the
46 report and having provided an opportunity for the prosecution to make its recommendation, the
47 judge shall make a final determination as to the eligibility of the child for diversion. There shall
48 be a rebuttable presumption that a child who is charged with a misdemeanor for which the
49 punishment is a fine, imprisonment in a jail or house of correction for not more than six months,
50 or both such fine and imprisonment, and who does not have any outstanding warrants,
51 continuances, appeals or juvenile court cases pending, shall be found eligible for diversion.

52 The proceedings of a child who is found eligible for diversion under section 87 shall be
53 stayed for a period of ninety days, unless the judge in his discretion considers that the interest of
54 justice would best be served by a lesser period of time.

55 In no event shall a stay of proceedings be granted pursuant to this section unless the child
56 consents in writing to the terms and conditions of the stay of proceedings and knowingly
57 executes a waiver of his right to a speedy trial on a form approved by the chief justice of the
58 juvenile courts. Such consent shall be with the advice of the child's counsel. Any request for
59 assessment, or a decision by the child not to enter a program, or a determination by probation or
60 by a program that the child would not benefit from diversion, or any statement made by the child
61 during the course of assessment, shall not be admissible against the child in any proceedings; nor
62 shall any consent by the child to the stay of proceedings or any act done or statement made in
63 fulfillment of the terms and conditions of such stay of proceedings be admissible as an
64 admission, implied or otherwise, against the child, should the stay of proceedings be terminated
65 and proceedings resumed on the original complaint or indictment. No statement or other
66 disclosure or records thereof made by a child during the course of assessment or during the stay
67 of proceedings shall be disclosed at any time to a prosecutor or other law enforcement officer in
68 connection with the investigation, or prosecution of any charge or charges against said child or
69 any co-defendant.

70 If a child has been found eligible for diversion under this section, the child shall not be
71 arraigned and no entry will be made into the CORI systems until such time as a Justice of the
72 Juvenile Court so orders for the purposes of resuming the ordinary processing of a delinquency
73 or youthful offender proceeding. If a child is found eligible under this section, this eligibility is
74 not considered an issuance of a criminal complaint for the purposes of Section 37H 1/2 of Chapter
75 70.

76 Section 90. A district attorney may, in his discretion, divert any child to the community
77 or a Program either before or after the assessment procedure set forth in section 88, with or

78 without the permission of the court. A district attorney who diverts a case pursuant to this
79 section may request a report from a Program regarding the child's status in and completion of
80 such Program.

81 If the child during the stay of proceedings is charged with a subsequent offense, a judge
82 in the court that entered the stay of proceedings may issue such process as is necessary to bring
83 the child before the court. When the child is brought before the court, the judge shall afford him
84 an opportunity to be heard. If the judge finds probable cause to believe that the child has
85 committed a subsequent offense, the judge may order, when appropriate, that the stay of
86 proceedings be terminated and that the commonwealth be permitted to proceed on the original
87 complaint or indictment as provided by law.

88 Section 92. Upon the expiration of the initial ninety-day stay of proceedings the probation
89 officer of the juvenile court shall indicate to the court the successful completion of diversion by
90 the child or recommending an extension of the stay of proceedings for not more than an
91 additional ninety days, so that the child may complete the diversion program successfully.

92 If the probation officer indicates the successful completion of diversion by a child, the
93 judge shall dismiss the original complaint or indictment pending against the child. If the report
94 recommends an extension of the stay of proceedings, the judge may, on the basis of the report
95 and any other relevant evidence, take such action as he deems appropriate, including the
96 dismissal of the complaint or indictment, the granting of an extension of the stay of proceedings
97 or the resumption of proceedings.

98 If the conditions of diversion have not been met, the juvenile's attorney shall be notified
99 prior to the termination of the child from diversion and the judge may grant an extension to the

100 stay of proceedings if the juvenile reasonably satisfies the court that he or she does not have the
101 means to comply with the conditions of diversion.

102 If the judge dismisses a complaint or indictment under this section, the court shall enter
103 an order directing expungement of any records of the complaint or indictment and related
104 proceedings maintained by the clerk, the court, the department of criminal justice information
105 services, the court activity record index and the probation department that directly pertain to the
106 complaint or indictment.

107 Section 93. The office of the Commissioner of Probation shall, in its discretion, certify,
108 monitor and aid all programs to which children may be diverted pursuant to this chapter. The
109 office of the commissioner of Probation shall, in its discretion, (a) issue for a term of two years,
110 and may renew for like terms, a certification, subject to revocation for cause, to any person,
111 partnership, corporation, society, association or other agency or entity of any kind, other than a
112 licensed general hospital or a department, agency or institution of the federal government, the
113 commonwealth or any political subdivision thereof, deemed to be responsible and suitable to
114 establish and maintain such a program and to meet applicable certification standards and
115 requirements; and in the case of a department, agency or institution of the commonwealth or any
116 political subdivision thereof, grant approval to establish and maintain a program for a term of
117 two years, and may renew such approval for like terms, subject to revocation for cause; (b)
118 promulgate, in consultation with the advisory board established in section 94, rules and
119 regulations establishing certification and approval standards and requirements; (c) establish
120 limits for caseloads and enrollment so that programs are able to provide high quality intensive
121 individualized service to those children participating in such programs; (d) procure, where
122 appropriate, by contract, the personnel, facilities, services, and materials necessary to carry out

123 the purposes of this act, subject to all applicable laws and regulations; (e) prepare reports for said
124 advisory board showing the progress of all programs in fulfilling the purposes set forth; (f) notify
125 the appropriate presiding justice of the individual court that adequate facilities and personnel are
126 available to fulfill an appropriate array of programs and services for that court; (g) provide
127 technical assistance to such program as may be certified hereunder; (h) provide for the audit of
128 any funds expended by the office for the support of programs certified hereunder; (i) promote the
129 cooperation of all agencies which provide education, training, counseling, legal, employment, or
130 other services to assure that eligible individuals diverted to programs may benefit to the
131 maximum extent practicable; (j) prepare and submit an annual report to the advisory board to the
132 office of the Commissioner of Probation, the chief justices of the supreme judicial, appeals, and
133 juvenile courts and to all justices in the juvenile court system evaluating the performance of all
134 programs.

135 SECTION 2. The fourth paragraph of section 98A of chapter 276 of the General Laws, as
136 appearing in the 2014 Official Edition, is hereby amended by adding at the end thereof the
137 following:-

138 The advisory board shall assist the commissioner in coordinating the efforts of all public
139 agencies and private organizations and individuals within the commonwealth concerned with the
140 providing of services to defendants by said programs.