

**COMMITTEE FOR PUBLIC COUNSEL SERVICES
CHILDREN AND FAMILY LAW DIVISION**

CHINS REFORM ENACTED

On August 7, 2012, Governor Patrick signed into law Senate Bill 2410, reforming the CHINS statute. An overhaul of the 38-year-old CHINS program was supported and worked on by advocates, including CPCS for nearly seven years. CPCS made significant contributions towards the concept of CHINS reform and impacted some of the bill's major provisions.

The bill, as passed, seeks to divert children from the legal process, when appropriate, and direct them to behavioral, medical and mental health treatment, as well as other behavioral and preventative services such as special education evaluations, mentoring, family and parent support, and after-school and out-of-school opportunities. In order to begin the process, the Legislature establishes a pilot program under the Executive Office of Health and Human Services that should be in place within three years, subject to appropriation.

While the services portion of the law has a three-year phase in period, the procedural changes to Chapter 119 go into effect November 5, 2012, 90 days from signing. All attorneys handling CHINS cases must be familiar with the new law. Below is a brief summary of the changes. We will send out more information as the effective day approaches. The law can be found at <http://www.malegislature.gov/Bills/187/Senate/S02410>.

Among other things, the new law:

- changes the process by focusing on the family and child together and not the child alone (i.e., “child and family requiring assistance”);
- requires that parents be given information in writing at the beginning of the process so they can better understand what to expect throughout;
- provides that parents have the right to counsel at any hearing “regarding custody of the child”;
- requires that children be notified of their right to counsel upon filing of an application;
- provides that an application for a runaway or stubborn child petition may be filed on a child between the ages of 8 and 18 (school-based petitions must still be dismissed when the child turns 16);
- eliminates the ability of police officers to file petitions in runaway or stubborn child cases;
- requires the court to schedule a preliminary hearing within 15 days of filing an application;
- shortens the informal assistance period to 90 days, which may be extended for one additional 90 day period;
- replaces “arrest” with “custodial protection” and requires law enforcement to immediately notify the parent when a child is taken into “custodial protection”;
- eliminates bail, but permits the court to release the child on conditions or grant temporary custody to DCF in certain circumstances;
- prohibits children who require assistance from being confined in shackles or placed in a court lockup;
- eliminates the de novo process and the right to a jury trial;
- maintains the beyond the reasonable doubt standard for adjudication;

- permits the petitioner or any other party to move to dismiss “any time prior to a hearing to determine the disposition of a request for assistance”;
- following adjudication, requires the court to convene a conference to discuss appropriate treatment, services, placement and conditions for the child;
- provides that a dispositional hearing be held only after the above-described conference;
- reduces the time a CHINS disposition order may remain in effect from 6 months to 120 days;
- provides that a CHINS disposition order may be renewed after the 120 days, for a maximum of 3 additional 90 day periods (this means a CHINS order can only last a maximum of 390 days); and
- provides that an appeal of any CHINS order (final or interlocutory) must be filed with a single justice of the Appeals Court under G.L. c. 231, sec. 118.

In addition, the new law changes the interlocutory appeal process in all CHINS and care and protection cases. Petitions must now be filed in the Appeals Court under G.L. c. 231, sec. 118, not in the SJC under G.L. c. 211, sec. 3.