

Massachusetts Trial Court
Juvenile Court
Administrative Office

HANDBOOK FOR PARENTS, LEGAL GUARDIANS, AND
CUSTODIANS
IN
CHILD REQUIRING ASSISTANCE CASES

November 05, 2012

An Application for a Child Requiring Assistance has been filed by you or a representative from your child or ward's school stating he or she is a child requiring assistance. This handbook will help you understand what is likely to happen in court, who the people are that may be involved, and what your rights are as a parent, legal guardian, or custodian in a Child Requiring Assistance case.

You may have questions about the court proceedings that this book does not answer. You should ask your attorney if you are represented by counsel. You may also ask clerks in the Clerk-Magistrate's office of the court where your child's case is being heard. However, clerks may not give legal advice.

THE APPLICATION

A Child Requiring Assistance court case is started by filing an Application for a Child Requiring Assistance. A parent, legal guardian, or custodian with custody of the child may file an application stating that the child is:

- ▶ a **Runaway** who repeatedly runs away from the home of the parent, legal guardian, or custodian;
- ▶ a **Stubborn** child who fails to obey the lawful and reasonable commands of the parent, legal guardian, or custodian which interferes with his or her ability to care for the child;

A person who represents the school district where your child attends can file an application stating that your child is a:

- ▶ **Habitual Truant** who fails to attend school for more than 8 days in a quarter without a proper excuse;
- ▶ **Habitual School Offender** who fails to obey the lawful and reasonable commands of the school;

NOTICE

A notice that the Application has been filed and the date for the **Preliminary Hearing** will be sent to you, even if you filed the application, your child, the Department of Children and Families, and the Department of Youth Services. If your child does not appear at the **Preliminary Hearing** after receiving the notice, a summons will be issued.

SUMMONS

If the clerk determines that your child is unlikely to come to court after receiving the notice of the **Preliminary Hearing**, the clerk may issue a summons for the child to appear at the preliminary hearing. A copy of the summons will be sent to the child's parent, legal guardian or custodian. Notice will also be sent to the child's parent, legal guardian or custodian if he or she did not file the application.

If the child does not appear at the preliminary hearing after receiving the summons, the judge may issue a **Warrant of Protective Custody**.

WARRANT OF PROTECTIVE CUSTODY

A Warrant of Protective Custody orders a law enforcement officer to pick-up your child and bring your child to the court for a hearing. At the hearing, the judge will decide whether to release your child to you or place your child in the custody of the Department of Children and Families for 15 days. The order may be extended twice for a total of 45 days. The probation office will make an immediate inquiry for a recommendation during the Preliminary Hearing.

CHILD WITH NATIVE AMERICAN HERITAGE

If you or a member of your family have American Indian or Native American Heritage, you must notify the Clerk-Magistrate's office. The tribe must be notified if the court intends to give someone else custody over your objection.

IMMEDIATE INQUIRY

A probation officer will interview you and your child about the information in the application. The probation officer will also ask you to provide information about your income to determine whether you and your child are indigent. If your child is indigent, an attorney will be appointed to represent your child in the case. If you are indigent, an attorney will be appointed to represent you if the judge considers removing the child from your custody.

PRELIMINARY HEARING

At the hearing before the court, the probation officer will make a recommendation whether the court should **Dismiss the Case** for lack of "probable cause", refer the child and parent with their agreement to a probation officer for **Informal Assistance** or accept the Application for Child Requiring Assistance and schedule the **Fact-Finding Hearing**.

- ▶ **If the case is dismissed**, the judge will issue an expungement order requiring the clerk to destroy all of the papers in the courts files relating to the case and any records that may exist at the Department of Criminal Justice.

INFORMAL ASSISTANCE

The court may decide that the best way to help your child is to order informal assistance with a probation officer. You and your child must agree to informal assistance. The probation officer may refer your child to a public or private organization or a person for psychiatric, psychological, educational, occupational, medical, dental or social services and may hold meetings with you and your child to help solve problems that led to you or the school district filing the application.

The first referral for informal assistance is for 90 days. At the end of the 90 days, the case may be brought back to court for an **Informal Assistance Review Hearing**. Informal assistance may be extended for an additional 90 days if you and your child agree. The court may also dismiss the case or schedule it for a **Fact-Finding Hearing**.

At the end of the second referral, the court will either dismiss the case or schedule the **Fact-Finding Hearing**. If the case is dismissed, the judge will issue an expungement order as described under "Preliminary Hearing."

You are not required to give the probation officer any papers. Although not required, it is recommended that you and your child make a good faith effort to participate in services. If you and your child do not make a good faith effort to participate in services offered by the probation officer, the probation office will notify the Clerk Magistrate who will schedule the **Fact-Finding Hearing**.

FACT-FINDING HEARING

At this hearing, you and your child have the right to be heard. The applicant who is the person who filed the application is responsible for presenting enough evidence for the judge to find beyond a reasonable doubt that the child requires assistance. At the conclusion of the **Fact-Finding Hearing**, the judge will either:

- ▶ dismiss the case if the evidence presented to the court does not prove beyond a reasonable doubt that your child requires assistance, or
- ▶ find that your child requires assistance and schedule a **Conference** and a **Disposition Hearing**. Whenever possible, the **Conference** and the **Disposition Hearing** will be scheduled on the same date.

CONFERENCE

The Conference provides an opportunity for you and your child, the probation officer, a representative from your child's school, clinicians, Department of Children and Families, if involved with your family, and other identified persons to provide the court with information regarding the best way to help your child. Everyone named above will receive notice of the date and time of the Conference.

The probation officer will prepare a written report for the Conference. Any of the other invited persons may also present a written report.

DISPOSITION HEARING

At the Disposition Hearing, the judge will determine what orders should be entered to help your child who requires assistance. The judge's orders may include:

- ▶ Permitting the child to remain with you subject to any conditions and limitations the court may order, which may include arranging 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; or
- ▶ Placing your child in the care of a relative or Department of Children and Families subject to any conditions and limitations the court may order.

The first disposition order will last for 120 days. At the end of **Disposition Review Hearing**, the judge will review your child's progress and either dismiss the case or extend the order for 90 days if the judge finds that the purposes of the order have not been accomplished and extension of the order would likely further those purposes. In total, the judge may extend the order three times. At that point, the case must be dismissed. The total period of the Disposition Order including all extensions is 390 days.

CUSTODIAL PROTECTION

A law enforcement/police officer may take a child into custodial protection if the officer has reason to believe that the child is a runaway and is unlikely to respond to a summons to appear in court. The officer will first try to bring the child home, to a shelter, or to the Department of Children and Families before the child is brought to

court.

When your child is brought to court, you will be contacted. It is important that you make every effort to come to court as soon as possible. The court does not have the authority to prevent your child from leaving court other than to tell your child to wait for you or for his or her case to go before a judge. If your child does not have a Child Requiring Assistance case your child will be released to you.

TEMPORARY CUSTODY HEARING

If your child has a case or if you decide to file a case after the child is brought to court, you may be required to go before a judge for a Temporary Custody Hearing. If you are indigent, the court will appoint an attorney to represent you at the hearing. The judge will decide whether to release the child to you or have the child held at the Department of Children and Families for 15 days. The order may be renewed twice for 15 days each. The child may not be held at the Department of Children and Families during this part of the case for more than 45 days.

RIGHTS OF PARENTS AND GUARDIANS

Parents, legal guardians and custodians of the child have many rights in a Child Requiring Assistance Case. Here are some of the most important rights.

- ▶ You have the right to attend all court hearings.
- ▶ You have the right to be represented by an attorney at any hearing in which the judge considers removing your child from your custody and your home. If you cannot afford to hire an attorney, the court will appoint an attorney for you.
- ▶ You have the right to a language interpreter and/or a sign language interpreter if you do not speak or understand English.
- ▶ You have the right to have another court review the decisions a Juvenile Court judge makes on your case.

YOUR CHILD'S RIGHTS

Your child has the same rights that you have in a Child Requiring Assistance Case. In addition, your child has the right to be represented by counsel at all hearings.

Whether your child is brought to court under Custodial Protection or a Warrant of Protective Custody or appears in court in response to a notice, or summons, your child may not be confined in shackles or similar restraints or court lock-up in connection with a Child Requiring Assistance case.

FREQUENTLY ASKED QUESTIONS

Who attends court hearings?

Child requiring assistance cases are confidential and closed to the public. Parents, attorneys representing the parties (applicant, child, Department of Child and Families), the probation officer, a clerk to record the hearing, and the judge may all be present for the court hearing.

Will my child have an attorney?

Yes. The judge will appoint an attorney to represent your child. This attorney will not be the same attorney who represents you. The attorney will speak to your child and represent your child at all hearings.

Can I ask the judge to dismiss the case?

Yes. You can ask the judge to dismiss the case by filing a "Motion to Dismiss" in the Clerk Magistrates Office in the court where your case is heard. The form is available in the Clerk Magistrates Office and on the Juvenile Court website.

What is the Department of Children and Families?

The Massachusetts Department of Children and Families is the state's child protection agency.

Court Dates

- ▶ Write down all court dates and where hearings are scheduled.
- ▶ It is your responsibility to know when hearings are scheduled and to come to court for the hearings.
- ▶ It is important to keep track of the hearing dates because you may not receive written notices of hearings after the first time your case is heard.

PRELIMINARY HEARING

Date: _____
Place: _____
Time: _____

INFORMAL ASSISTANCE HEARING

Date: _____
Place: _____
Time: _____

INFORMAL ASSISTANCE REVIEW

Date: _____
Place: _____
Time: _____

TEMPORARY CUSTODY HEARING

Date: _____
Place: _____
Time: _____

TEMPORARY CUSTODY HEARING

Date: _____
Place: _____
Time: _____

Date: _____
Place: _____
Time: _____

FACT-FINDING HEARING

Date: _____
Place: _____
Time: _____

CONFERENCE

Date: _____
Place: _____
Time: _____

DISPOSITION HEARING

Date: _____
Place: _____
Time: _____

DISPOSITION REVIEW HEARING

Date: _____
Place: _____
Time: _____

DISPOSITION REVIEW HEARING

Date: _____
Place: _____
Time: _____

DISPOSITION REVIEW HEARING

Date: _____
Place: _____
Time: _____

**Important Names, Addresses and
Telephone Numbers**

<p>COURT NAME</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>PROBATION OFFICER</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>DEPARTMENT OF CHILD AND FAMILIES SOCIAL WORKER</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>NAME</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p>	<p>YOUR ATTORNEY</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>CHILD'S ATTORNEY</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>NAME</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p> <p>NAME</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Tel: _____</p>
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