



Legal Update

November 2012

Changes to Juvenile Law Regarding CHINS¹

Police officers cannot arrest juveniles for violating what were formerly called CHINS violations.

Senate Bill 2410: An act relative to families and children engaged in services

Effective November 5, 2012, police officers **cannot arrest** juveniles for what was formerly called a CHINS warrant or for failing to obey a summons issued pursuant to Section 39 E. On August 7, 2012, Governor Patrick signed *An Act Regarding Families and Children Engaged in Services* (hereinafter referred to as “FACES”) into law. The new legislation repeals portions of Chapter 119, referring to Child in Need of Services (hereinafter referred to as “CHINS”). The implementation of the new legislation will be introduced in phases over the next three years. However, the initial phase becomes effective November 5, 2012.

How does the new legislation affect policing?

The new legislation encourages police to work with community- based services in dealing with children who require assistance. Police officers have **no power to arrest** a child for what was formerly called a CHINS warrant or for failing to obey a summons issued pursuant to Section 39 E. Police officers can only place a

¹ Please note that Juvenile Court has not yet issued any forms or memorandums regarding the implementation of the legislation relative to Families and Children Engaged in Services that becomes effective November 5, 2012.

child who is designated stubborn, truant, or a run away into “custodial protection,” if a child fails to obey a summons issued pursuant Section 39 E or the police officer has probable cause to believe the child has run away from the home of the parents or guardian and will not respond to a summons. Additionally, any child placed in “custodial protection” **cannot be handcuffed, placed in confinement, or brought to any court lockup facility in connection with any proceedings under 39 E to 39 I.**

1. **Application:** Police officers are **no longer able to file an application** for assistance (formerly known as a CHINS petition) on behalf of a child. Rather the new legislation states that a “parent, legal guardian or custodian” is authorized to file an application for assistance.
2. **Definition of a “Child In Need of Services” is now “Child Requiring Assistance” under FACES:**
 - (a) repeatedly runs away from the home of a parent or legal guardian;
 - (b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent's or legal guardian's ability to adequately care for and protect the child;
 - (c) repeatedly fails to obey lawful and reasonable school regulations; or
 - (d) “habitually truant” a school aged child is “habitually truant” when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter.
3. **No Right of Arrest:** Rather than arrest a child who is stubborn, truant or continually runs away from home, police officers are permitted to place the child in “custodial protection” if they have probable cause to believe that the child has run away from home of the parents or guardian and the child will not respond to a summons or if the child has failed to obey a summons issued pursuant to Section 39 E. As a result of the new legislation, police officers **cannot handcuff or shackle a child** who is in “custodial protection.”
4. **Approved facilities for “custodial protection”:** When a child is in “custodial protection,” police officers **cannot place the child in a locked facility** or a **facility designated or operated for juveniles** who are alleged to be delinquent or who have been adjudicated delinquent. Such child **may**, however, **be placed** in a facility which operates as a **group home** to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.
5. **Notification:** A police officer who initiates “custodial protection” must **immediately notify** the parent, other person legally responsible for the child’s care or the person with who the child is domiciled, that such child is under the “custodial protection” of an officer. The police officer must now receive a **written promise** that if they return a child to their home that the person whose custody they release the child to will bring the child to the court on the next court date.”
6. **Process for placing a child in “custodial protection”:** Any police officer who places a child in “custodial protection,” and has **notified** a parent, guardian or legal custodian, shall follow the steps below to place the child:

After **consulting with a probation officer**, the law mandates that police officers “must deliver the child to the following types of placements and in the following order of preference:”

(i) to one of the child’s parents, or to the child’s guardian or other responsible person known to the child, or to the child’s legal custodian including the Department of Children and Families or the child’s foster home upon the **written promise**, without surety, of the person to whose custody the child is released that such parent, guardian will bring the child to the court on the next court date.

(ii) forthwith and with all reasonable speed take the child directly and **without first being taken to the police station house**, to a temporary shelter facility licensed or approved by the department of early education and care, a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; or

(iii) **take the child directly to the juvenile court** in which the act providing the reason to take the child into custodial protection occurred if the **officer affirms on the record** that the officer attempted to exercise the options identified in clauses (i) and (ii), was unable to exercise these options and the reasons for such inability.

7. **Ramifications for a child that violates provisions of assistance under the new law:** The court can issue a summons if an application has been filed requiring assistance for the child. If the child fails to appear in court in response to a summons, the court can issue a warrant. Under these circumstances, a police officer can bring a child to court to answer the warrant.

Major Differences between CHINS and FACES For Police

Definitions	Child in Need of Services (CHINS)	Families and Children Engaged in Services (FACES)
Age Limitations for Filing Applications for Assistance	Only allowed to file an application for children from age 6 until age 17.	Allowed to file an application for children from age 6 until child's 18 th birthday.
<p>Status of Offenses that Qualify for Assistance (The categories for children requiring services has not changed: stubborn, truant and runaway)</p> <p>NOTE: Category referring to “sexually exploited children” was removed from the new legislation when defining a child requiring assistance.²</p>	<p>Children who:</p> <p>(a) repeatedly runs away from the home of a parent or legal guardian;</p> <p>(b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent's or legal guardian's ability to adequately care for and protect the child;</p> <p>(c) repeatedly fails to obey lawful and reasonable school regulations; or</p> <p>(d) “habitually truant” a child is habitually truant when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter.</p> <p>(e) “sexually exploited child”</p>	<p>(a) repeatedly runs away from the home of a parent or legal guardian;</p> <p>(b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent's or legal guardian's ability to adequately care for and protect the child;</p> <p>(c) repeatedly fails to obey lawful and reasonable school regulations; or</p> <p>(d) “habitually truant” a child is habitually truant when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter.</p>
Who can file for assistance on behalf of the child?	Parents Legal Guardians Police Officers (could only file when child was a runaway)	Parents Legal Guardians Custodians (police cannot file a petition on behalf a runaway children) School District
Right of Arrest	Police could previously arrest children who were runaways under CHINS. Police were able to handcuff and confine the child if necessary.	Police are no longer able to arrest under FACES but can only place a child in “custodial protection.” Police officers are not permitted to handcuff or shackle a child that is a runaway, stubborn or truant.
Facilities a child can be Placed	Previously, when police were involved, they were would bring the	Police are now required to find a group home to place a child that is

² Although this category was deleted, there is provision contained within the M. G. L. 178 of the Acts of 2011, (sex trafficking law) that designates a “sexually exploited child” as a child in need of assistance. This error will hopefully be correct as the new legislation is rolled out.

	child to juvenile court or to the police station if it was after operating hours.	in “custodial protection.” If police are unable to find a temporary shelter for the child, then the police can bring the child to juvenile court after the affirming on the record, that they were unable to connect with a group home or shelter.
Alternatives to Filing an Application with the Court	Previously, court clerks were only charged with opening an application for assistance.	Prior to issuing an application, court clerks are required to provide educational information regarding additional options for parents, legal guardians or custodians before involving the courts.
What happens after an application is filed?	<ul style="list-style-type: none"> • No mandatory preliminary hearing and no requirement that counsel be appointed in advance of the hearing. • Parents cannot participate as a party • Parents do not have a right to counsel only the child 	<ul style="list-style-type: none"> • Probable Cause Hearing must be held within 15 days of filing an application and counsel should be appointed to represent child. Child can be placed in custody of Department of Children and Families if necessary but cannot exceed 45 day period. • Counsel can be appointed to both parents and children • Prior to a hearing the request for assistance can be withdrawn
Length of Informal Assistance	6 months	90 days with option of extending an additional 90 days
Records Regarding Assistance	Anytime a petition was filed in the court seeking assistance for a child, it was entered into the CORI system. Although juvenile records are sealed, arrests that resulted from a CHINS violation were recorded in CORI.	No record of a child seeking assistance is entered into the CORI system because they are confidential and not open to the public. If an application is filed, the record will be expunged after the assistance has concluded.

I.) **Background:**

On August 7, 2012 Governor Deval Patrick signed S.2410 into law creating Chapter 240 of the Acts of 2012 which has considerably reformed the previously termed *Children in Need of Services* statutes of Chapter 119 and other related statutes of the Massachusetts General Laws. The following are the specific areas of concern that **pertain to local law enforcement personnel** which become effective on **Monday, November 5, 2012:**

II.) **New Statutory Definitions:** Under Chapter 119 Section 21:

“Child requiring assistance”, [No longer defined as a Child in Need of Services – CHINS] a child **between the ages of 6 and 18** who:

- (i) repeatedly **runs away** from the home of the child’s parent, legal guardian or custodian;
- (ii) repeatedly **fails to obey** the **lawful and reasonable commands of the child’s parent**, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
- (iii) repeatedly **fails to obey** the lawful and **reasonable regulations of the child’s school**; or
- (iv) is **habitually truant** [More than 8 school days (>8) in a quarter].

“Family requiring assistance”, a parent, guardian, custodian, sibling and any relative or caretaker responsible for a *child requiring assistance*.

“Habitually truant”, a school-aged child, not excused from attendance under the lawful and reasonable regulations of such child’s school, who willfully fails to attend school for **more than 8 school days in a quarter**.

III.) **Important Statutory Considerations:**

- **No Police Application:** A Police Officer **may no longer apply** for what was formerly known as a CHINS petition now called an ***“Application for Assistance”*** in any case involving a **runaway**.
- **Parent not Police:** A legal guardian, or custodian of a child having custody of such child [No longer a Police Officer], may initiate an ***Application for Assistance*** in one of said courts stating that said **child repeatedly runs away from the home** of said parent or guardian or repeatedly.
- **No Restraints:** A Child **may no longer be confined in shackles or similar restraints or in a court lockup facility**. See G.L. Chapter 119 §39G.
 - “A child who is the subject of an *application for assistance* may **not be confined**

in shackles or similar restraints or in a **court lockup facility** in connection with any proceedings under sections 39E to 39I, inclusive.

- A child who is the subject of *an application for assistance* **shall not be placed in a locked facility** or any facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent.
- Such child **may**, however, **be placed in a facility which operates as a group home** to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.”
- **No Arrests:** A child **may no longer be arrested** for committing so-called CHINS behavior. (However, See below)
- **Custodial Protection:** However, they now can be taken into the “**custodial protection**” for engaging in the defined behavior. [See the following Procedure]
 - A child may be taken into **custodial protection** [No longer classified as an arrest] for engaging in the behavior described in the definition of “Child requiring assistance” in section 21 of Chapter 119, only if such child
 - ❖ has **failed to obey a summons** issued pursuant to section 39E,
 - ❖ or if the law enforcement officer initiating such *custodial protection* has **probable cause** to believe that such child has **run away** from the home of his parents or guardian
 - ❖ and will not respond to a summons.

After a law enforcement officer has taken a child into *custodial protection*, the officer shall:

- ❖ **immediately notify the parent**, other person legally responsible for the child’s care
- ❖ or the person with whom the child is domiciled [No longer Juvenile Probation Officer],
- ❖ that such child is under the *custodial protection* of the officer
- ❖ **and** (2) a representative of the **department of children and families**, **if** the law enforcement officer has **reason to believe** that the child **is or has been in the care or custody of such department**, and shall inquire into the case.

The law enforcement officer, in consultation with the probation officer, **shall then immediately make all reasonable diversion efforts** so that such child is delivered to the following types of placements, and in the **following order of**

preference:

(i) **to one of the child's parents**, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of children and families or the child's foster home; **upon the written promise**, without surety, of the person to whose custody the child is released that such parent, guardian, person or custodian will bring the child to the court on the next court date.

(ii) **forthwith and with all reasonable speed** take the child **directly and without first being taken to the police station,**

- ❖ to a temporary shelter facility licensed or approved by the department of early education and care,
- ❖ a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care
- ❖ or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; or

(iii) take the child **directly to the juvenile court** in which the act providing the reason to take the child into **custodial protection** occurred if the officer affirms on the record that the officer attempted to exercise the options identified in clauses (i) and (ii), was unable to exercise these options and the reasons for such inability.

As mentioned above a child in custodial protection may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under sections 39E to 39I, inclusive.

A child who is the subject of an application for assistance **shall not be placed in a locked facility or a facility designated or operated for juveniles** who are alleged to be delinquent or who have been adjudicated delinquent.

Such child **may**, however, **be placed** in a facility which operates as a **group home** to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

- **Medical Treatment:** Notwithstanding the foregoing requirements for placement, any such child who is taken into custodial protection [no longer arrested] **shall, if necessary,** be taken to a **medical facility for treatment or observation.**
- **DCF Custody:** If the court finds that a child stated to require assistance by reason of **repeatedly refusing to obey the lawful and reasonable commands of such child's parents,** legal guardian or custodian or is likely not to appear at the fact finding or

disposition hearing, the court may order the child to be released upon such terms and conditions as it determines to be reasonable or, if the standards below are met, **may place the child in the temporary custody of the department of children and families.**

- **Confidential:** Proceedings under sections 39E to 39I, inclusive, **shall be confidential** and **not open to the public** and shall not be submitted to the criminal record information system.
- **Warrant may Issue:** Upon the filing of an **application for assistance** under this section, the court may issue a summons, to which a copy of the application for assistance shall be attached, requiring the child named in such application to appear before said court at the time set forth in the summons. **If such child fails to obey the summons,** said **court may issue a warrant** reciting the substance of the petition and requiring the officer to whom it is directed forthwith to **take and bring such child before said court.** Notice of the hearing shall be given to the department of children and families and the department of youth services.