

QUICK REFERENCE ON CHINS (Child In Need of Services): A GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS



THE FOUR TYPES OF CHINS, as defined in M.G.L. c. 119, § 21 and commonly referred to as:

1. **“Runaway”**: A child between the ages of 6 and 17 who “repeatedly runs away from the home of a parent or legal guardian.” A parent or legal guardian who has custody of the child or a police officer may apply for a runaway petition. M.G.L. c. 119, § 39E.
2. **“Stubborn Child”**: A child between the ages of 6 and 17 who “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.” A parent or legal guardian who has custody of the child or a police officer may apply for a stubborn child petition. M.G.L. c. 119, § 39E. The court may impose bail on a stubborn child if the court finds that the child is not likely to appear at a preliminary inquiry or a hearing on the merits. M.G.L. c. 119, § 39H.
3. **“Habitual School Offender”**: A child between the ages of 6 and 16 who “repeatedly fails to obey lawful and reasonable school regulations.” Only a school supervisor of attendance may apply for a school offender petition. M.G.L. c. 119, § 39E. M.G.L. c. 119, § 21 defines a school offender as a child between the ages of 6 and 17, but M.G.L. c. 119, § 39G states that no order may continue in effect after a school offender turns 16, and, therefore, this type of petition must be filed before the child turns 16.
4. **“Truant”**: A child between the ages of 6 and 16 who “willfully fails to attend school for more than 8 school days in a quarter” without a proper excuse. Only a school supervisor of attendance may apply for a truant petition. M.G.L. c. 119, § 39E. M.G.L. c. 119, § 21 defines a truant as a child between the ages of 6 and 17, but M.G.L. c. 119, § 39G states that no order may continue in effect after a truant turns 16, and, therefore, this type of petition must be filed before the child turns 16.

STEPS IN A CHINS PROCEEDING (Please note: Steps may vary depending on the court.)

1. **Application**: Petitioner (i.e., parent, school, or police officer) files an application for a CHINS petition in juvenile court.
2. **Preliminary Inquiry**: A probation officer conducts an initial interview with parent/guardian and child.
3. **Preliminary Hearing**: The court should conduct a preliminary hearing with the input of probation to determine whether a petition should issue. The preliminary hearing can result in three dispositions: (i) petition not issued for lack of probable cause to believe the child is in need of services; (ii) petition not issued because the court finds “the interests of the child would best be served by informal assistance” and the child and parent consent to a referral to probation; (iii) petition issued and a trial on the merits is scheduled. M.G.L. c. 119, § 39E. In some courts, however, if the family and probation officer can agree to the terms of informal assistance, the probation officer may work with the family without a preliminary hearing and the application will remain pending.
4. **Informal Assistance**: Informal assistance begins with a six month “contract.” It may continue for an additional six months after the initial 6-month period if the parent and child agree. Informal assistance cannot continue after 12 months. M.G.L. c. 119, § 39E.
5. **Outcome of Informal Assistance**: “[I]f the child or his parents fail to participate in good faith” during informal assistance, the clerk will set a date for a trial. At the end of informal assistance, the matter either closes or is set for trial. M.G.L. c. 119, § 39E.
6. **Adjudication**: If the child does not stipulate to being a CHINS, the court, at a trial on the merits, must find beyond a reasonable doubt that the child meets the definition of one of the types of CHINS or dismiss the petition. M.G.L. c. 119, § 39G. A different judge than the one who presided at the preliminary hearing must preside at the hearing on the merits, and statements made by a parent or child during informal assistance cannot be used during adjudication but may be used at disposition. M.G.L. c. 119, § 39E.
7. **Disposition**: If the court finds the child to be in need of services, it may then permit the child to remain with parents, place the child with a qualified relative or other adult, place the child in the care of a licensed childcare or charitable agency or a qualified private organization, or commit the child to the Department of Children and Families (DCF). The dispositional order is limited to a term of six months. M.G.L. c. 119, § 39G. If the parent may lose custody of the child, that parent is entitled to an attorney.
8. **Dismissal of Case**: At the end of this six month order, the court must dismiss the petition or, after a hearing, find by a preponderance of the evidence that the purpose of the order has not been accomplished and that an extension of up to six months would be reasonably likely to further the purposes of the order. School offender and truant petitions must be dismissed when the child turns 16, and runaway and stubborn child petitions must be dismissed when the child turns 18. M.G.L. c. 119, § 39G.
9. **Appeal of Adjudication**: A child adjudicated in need of services *at a bench trial* may request a trial de novo by jury by filing a written notice of appeal by the end of the next business day. The Appeals Court hears all other appeals. M.G.L. c. 119, § 39I.

ISSUES COMMON TO ALL TYPES OF CHINS

- If a child alleged to be in need of services fails to obey a summons or if an officer has probable cause to believe that a child has run away from a guardian and will not respond to a summons, an officer may arrest that child. M.G.L. c. 119, § 39H. After the arrest, the court will issue a petition if it has not already and decide whether to schedule a trial on the merits or refer the child to informal assistance. M.G.L. c. 119, § 39E.
- Children alleged to be in need of services are entitled to counsel “at all hearings.” M.G.L. c. 119, § 39F. But time of appointment varies in practice.
- A child may be held on bail or released on conditions if that child fails to respond to a CHINS summons but may not be held in a delinquency facility. M.G.L. c. 119, § 39H. Local and DCF practice regarding CHINS bail varies. See, e.g., 110 CMR 4.63.
- The child is entitled to a six person jury at the hearing on the merits. M.G.L. c. 119, § 39E. If the child elects a bench trial at adjudication, the child is entitled to a trial de novo by a six person jury on appeal. M.G.L. c. 119, § 39I.
- The court in a CHINS case may not directly order a child to fulfill certain conditions and so may not hold the child in contempt for failing to obey. The court may enter a conditional custody order. In re Vincent, 408 Mass. 527, 531 (1990).
- DCF must conduct evaluations on children in its custody suspected of engaging in sexual offenses or arson. M.G.L. c. 119, § 33B. The child’s attorney should consider the possibility of self-incrimination during such evaluations.

RELEVANT STATUTES AND REGULATIONS

- M.G.L. c. 119, § 39E: Petitions, informal assistance and juries in CHINS cases.
- M.G.L. c. 119, § 39F: A child's right to an attorney in a CHINS case.
- M.G.L. c. 119, § 39G: Adjudication/disposition at a CHINS hearing.
- M.G.L. c. 119, § 39H: Arrest, bail, and appeal of bail in a CHINS case.
- M.G.L. c. 119, § 39I: Right to appeal in CHINS cases and appeals process.
- M.G.L. c. 119, § 29B: If a child remains in DCF custody for 12 months, the court must conduct a permanency hearing within the CHINS proceeding.
- M.G.L. c. 119, § 29C: If DCF has custody of a child, the court must find that leaving the child at home is "contrary to his best interests" and determine whether DCF has made "reasonable efforts" to prevent removal from home.
- Relevant DCF regulations: 110 CMR 4.01-4.09 (voluntary service provision); 4.61-4.67 (CHINS cases); 6.01-6.13 (service plans and case review).
- Indian Child Welfare Act, 25 U.S.C. §§ 1901-63: Procedural safeguards for Native American children facing removal from home.

RELEVANT CASELAW

- In re Hilary, 450 Mass. 491, 502 (2008): "[P]ursuant to G.L. c. 119, § 29, after a child is adjudicated a child in need of services, a parent is entitled to counsel at the dispositional phase of the proceeding if custody of the child could be granted to [DCF]."
- In re Angela, 445 Mass. 55, 55-56 (2005): "[B]efore a judge may extend up to six months a dispositional order with an out-of-home placement arising from an adjudication that a child is in need of services, G.L. c. 119, § 39G, third par., requires the judge to hold an evidentiary hearing and find by a preponderance of the evidence that the purposes of the dispositional order have not been accomplished and that an extension of the order would be reasonably likely to further those purposes."
- Commonwealth v. Florence F., 429 Mass. 523, 526 (1999): "Because Juvenile Court judges may not issue direct orders in CHINS proceedings. . . , no provision of the Juvenile Court in CHINS cases, even a condition of custody, can be a valid order sufficient to provide a basis for criminal contempt."
- In re Gail, 417 Mass. 321, 326 (1994) (overruled by In re Angela on other grounds): Even if parent is petitioner, "the parent of a child adjudicated in need of services . . . has no right or authority under the statute to withdraw the child from the proceedings or from the court-ordered disposition."
- Oscar F. v. County of Worcester, 412 Mass. 38, 41-42 (1992): "As a condition of custody, a judge may refer a child . . . to the appropriate school committee for a determination whether the child requires special education. . . . A judge may not, however, make such a determination and then order a particular special education placement."
- In re Vincent, 408 Mass. 527, 531-32 (1990): "Nowhere does the [CHINS] statute authorize a judge directly to order a child . . . to abide by . . . conditions the judge imposes except as a condition of custody.... Since the underlying order was invalid, any use of the contempt power for failure to obey the order was therefore unwarranted."

TIPS FOR ADVOCATES

- ⇒ Always meet/speak with the child and explain the CHINS process.
- ⇒ Speak with the parent(s) and probation officer and, when appropriate, get school records.
- ⇒ Weigh the advantages and disadvantages of a referral to the juvenile court clinic.
- ⇒ If the court adjudicates the child to be in need of services, consider scheduling a review date prior to the end of the initial six-month period to check in with all parties.
- ⇒ Strategize about seeking an out of home placement order. See M.G.L. c. 119, § 39G.
- ⇒ If the child does not wish to be adjudicated as a CHINS and agrees to receive services, consider advocating for the following services while delaying adjudication:

DCF Services

- ◆ With child's permission, obtain release to speak to and attend meetings with DCF.
- ◆ Ensure that DCF abides by its regulations for providing services.
- ◆ If DCF refuses to adjust placement or placement-related services for a child in DCF custody, consider filing an abuse of discretion motion. See Care and Protection of Isaac, 419 Mass. 602, 610-11 (1995).

Education Support

- ◆ Consider requesting a special education evaluation for a child. 603 CMR 28.04(1).
- ◆ Ensure that the evaluation considers whether the child has emotional or behavioral obstacles to learning in addition to intellectual ones. See 603 CMR 28.02.
- ◆ Be aware that if DCF has temporary custody of a child through a CHINS case, the parent may retain the right to make education decisions. See 110 CMR 7.402.

Behavioral Health Services

- ◆ Remember that home-based services are available to MassHealth-eligible children who meet certain criteria pursuant to Rosie D. v. Patrick and that parents maintain the right to make extraordinary medical decisions in CHINS cases. 110 CMR 11.02.
- ◆ Aid the custodial guardian in enrolling the child in MassHealth Standard, which has an income limit, or CommonHealth, which requires a disability determination. DCF enrolls children in its custody in MassHealth Standard.
- ◆ Advise the parent of a child who may need mental health services about self-referral to: (1) a MassHealth-qualified mental health clinician for evaluation and individual services or (2) a Community Service Agency (CSA) for evaluation and Intensive Care Coordination (ICC) or individual services. Services depend on medical need.
- ◆ Consider issues of confidentiality that Intensive Care Coordination (ICC) may raise.

HELPFUL RESOURCES

Amy Karp, et al., CHILD WELFARE PRACTICE IN MASSACHUSETTS (MCLE, Inc. ed., 2009): Chapter 18: CHINS by Michael F. Kilkelly, Esq.

Hon. R. Marc Kantrowitz, et al., MASSACHUSETTS JUVENILE DELINQUENCY & CHILD WELFARE LAW SOURCEBOOK & CITATOR (MCLE, Inc. ed., 2009).

Department of Children and Families: mass.gov/dcf

Department of Elementary and Secondary Education: <http://www.doe.mass.edu/sped/>

MassHealth: mass.gov/masshealth/

Rosie D.: www.rosied.org

The **Children's Law Center of Massachusetts (CLCM)** is a non-profit organization that provides free legal assistance to low-income children of the Commonwealth in the areas of education, child welfare and juvenile justice. Headquartered at 298 Union Street, Lynn, MA 01901, it maintains project offices in Roxbury and Lawrence. The CLCM is supported by the Mass Bar Foundation, the Massachusetts Legal Assistance Corporation, Boston Bar Foundation, United Way, Bank of America, and Eastern Bank, among other equally generous foundations, corporations and individual donors.

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