

QUICK REFERENCE ON CRA (Child Requiring Assistance): GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS

In November 2012, a new Massachusetts law entitled an **Act Regarding Families and Children Engaged in Services (FACES)**, Chapter 240 of the Acts and Resolves of 2012, replaced **Child in Need of Services (CHINS)** cases with **Child Requiring Assistance (CRA)** cases. The FACES law also mandates a change to service delivery systems, effective in 2015.

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

1. **“Runaway”**: A child between the ages of 6 and 18 who “repeatedly runs away from the home of a parent, legal guardian or custodian having custody of the child,” each of whom may apply to the court for assistance. M.G.L. c. 119, § 39E.
2. **“Stubborn Child”**: A child between 6 and 18 who repeatedly fails to obey reasonable home rules, thereby interfering with the parent’s ability to care for the child. A parent/guardian/custodian may apply to the court for assistance. M.G.L. c. 119, § 39E.
3. **“Habitual School Offender”**: A child between the ages of 6 and 18 who repeatedly fails to obey school rules. A school district may file an application but must state the specific steps that the school district has taken to improve the child’s conduct. M.G.L. c. 119, § 39E. A school-filed matter must be dismissed when the student turns 16. M.G.L. c. 119, § 39G.
4. **“Habitual Truant”**: A child between 6 and 18, who, without excuse, willfully fails to attend school for more than 8 days in a quarter. The school applicant must state whether or not the child and the child’s family have participated in a truancy prevention program. M.G.L. c. 119, § 39E. Under M.G. L. c. 119, § 39G, dismissal must occur when the child turns 16. (Note the contradiction regarding age limits in these statutory provisions.)
5. **“Sexually Exploited Child”**: Any person under 18 who has been subjected to sexual exploitation. This includes anyone who: is the victim of sexual servitude or sex trafficking; engages in sexual conduct for a fee or in exchange for food, shelter, clothing, education or care; is the victim of the crime of inducing a minor into prostitution; or engages in common night walking/street walking. M.G.L. c. 119, § 21. A parent or a police officer may file an application. M.G.L. c. 119, § 39L.

SELECT STATUTES/REGS

Select sections in M.G.L. c. 119:

- § 21: Definitions
- § 23(f): DCF involvement at age 18
- § 29B: Permanency planning requirement
- § 39E: Filing, Referral, Preliminary Hearing, Informal Assistance, and Expungement
- § 39F: Parent/child right to an attorney
- § 39G: Fact Finding, Conference, and Disposition
- § 39H: Custodial Protection, shackling ban, and temporary custody
- § 39I: Appeal process
- § 39K & 39L: Sexually exploited children

Select DCF regs: (110 CMR 1.00 to 18.16)

- 110 CMR 4.01-4.09 (voluntary services)
- 110 CMR 4.60-4.67 (“CHINS” cases)
- 110 CMR 6.00-6.13 (service plans)

STEPS IN A CRA PROCEEDING: (As filed in the Juvenile Courts)

1. **Application:** A parent, legal guardian, custodian, school, or police officer (but police only in a case involving a sexually exploited child) may apply. M.G.L. c. 119, §§ 39E & 39L.
2. **Referral By Juvenile Court Clerk:** Clerks shall inform applicants about community-based services, court process and the possibility of custody change. M.G.L. c. 119, § 39E.
3. **Preliminary Hearing (PH):** Within 15 days of application filing, probation conducts inquiry, and, after notice to child, court holds PH with child’s counsel present. At the PH, the court declines the application (if no probable cause); declines the application and orders informal assistance (see below); or schedules a fact finding hearing. M.G.L. c. 119 § 39E.
4. **Informal Assistance (IA):** In IA, probation conducts meetings to resolve or eliminate the need for a fact finding hearing. IA may extend for 90 days, and for an additional 90 day period, if agreed to in writing. After the 90 or 180 days, the application shall be dismissed or scheduled for a fact finding hearing. Statements by the child, or by others, during the period of IA, may not be used against the child at any subsequent court hearing but may be received and used by the court at disposition. M.G.L. c. 119, § 39E.
5. **Fact Finding Hearing (FFH):** The FFH is a bench trial and must be held before a Judge other than the one who presided at the PH, unless the parties waive the new judge requirement. If the court finds the statements in the application for assistance have been proved at the hearing beyond a reasonable doubt, it may determine the child to be in need of assistance and then will schedule the case for conference and subsequent hearing on disposition; otherwise the application is dismissed. M.G.L. c. 119, § 39G.
6. **Conference:** The court convenes, and may participate in, a conference that includes the probation officer, the child, the petitioner, a school representative, the parent/guardian/custodian, DCF (if involved with the family), and any other person who may be helpful. Be aware of issues of confidentiality if school attends. The child, petitioner, parent/guardian/custodian may speak. Probation (and other participants) present written recommendations to the court on treatment, services, and placement. M.G.L. c. 119, § 39G.
7. **Disposition:** A motion to dismiss may be filed prior to a disposition hearing. At disposition, the court may: (1) permit the child to remain with a parent, legal guardian or custodian; (2) place the child with a relative, adult or a private organization, following a probation assessment; (3) place the child with a licensed child care agency or licensed private agency; or (4) place the child in DCF custody. DCF may not refuse out-of-home placement of the child if recommended by court. DCF directs the type and length of the out-of-home placement, giving due consideration to the requests of a child where there is a history of abuse and neglect in the home of the parent or guardian. M.G.L. c. 119, § 39G.
8. **Term of Dispositional Orders:** The initial dispositional order lasts 120 days but may be extended after a hearing for up to three additional 90 day periods, a total of no more than 390 days. Dismissal must occur after 390 days, when child turns 18, or at 16 for a child made subject of an application filed by a school representative. M.G.L. c. 119, § 39G.
9. **Appeal:** A child, parent, legal guardian or custodian may appeal from any order or determination made under §§ 39E-H to the Massachusetts Appeals Court, pursuant to M.G.L. c. 231, § 118. Pending the appeal, the juvenile court retains jurisdiction and may enter any order under c. 119 to meet the needs of the child. The appeal proceeds under the Massachusetts Rules of Appellate Procedure that govern child welfare cases. M.G.L. c. 119, § 39I.

WARRANTS & CUSTODIAL PROTECTION (M.G.L. c. 119, §§ 39E & 39H)

- ◆ The court may not issue an arrest warrant in CRA cases.
- ◆ A court may issue a warrant instructing the police to take the child directly to court if the child fails to respond to a summons. M.G.L. c. 119, § 39E.
- ◆ A child may be taken into custodial protection if s/he fails to respond to a summons or police have probable cause to believe that the child has run away and will not respond to a summons. M.G.L. c. 119, § 39H.
 - ⇒ Law enforcement must notify parents immediately when a child is taken into custody.
 - ⇒ A police officer who uses his custodial protection power must in the following order:
 - (1) try to return the child to the parent/guardian/custodian
 - (2) take the child to a temporary shelter
 - (3) take the child directly to the juvenile court, but only if the officer certifies that he could not comply with Steps 1 and 2, above.
- ◆ Warrants and custodial protection do not enter into the warrant management system or any other criminal record information system, which means that police on the street often do not know if a child is a runaway or has failed to respond to a summons.
- ◆ The police may NOT take the child to the police station or shackle a child at any time.
- ◆ Note: Due to the above restrictions, police often do not pick up CRA youth after 4:30 pm or on weekends or holidays.

TEMPORARY CUSTODY HEARINGS (M.G.L. c. 119, § 39H)

The court may place a child in the temporary custody of the Department of Children and Families (DCF) at a temporary custody hearing.

- ◆ The temporary order lasts 15 days only and is renewable twice for a total of 45 days.
- ◆ Parents are entitled to counsel at a temporary custody hearing.
- ◆ There are two parts to the temporary custody determination:
 - ⇒ The first is ambiguous: "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 [sic] is likely not to appear at the fact finding or dispositional hearing, the court...may place the child in the temporary custody of the department of children and families."
 - ⇒ Court must also find:
 1. It is contrary to the child's best interests to remain at home; and
 2. DCF has made reasonable efforts to prevent removal or there is an immediate risk of harm or neglect which precludes the provision of the preventative services.

HELPFUL RESOURCES

Committee for Public Counsel Services: www.publiccounsel.net (go to Practice Area → Children and Family Law and click on appropriate link on CRA Resources)
Children's Law Center: www.clcm.org (click on Publications and look for CRA/FACES)
Department of Children and Families: www.mass.gov/dcf

BASIC ADVOCACY TIPS

- ◆ Request probation intake form and coordinate with delinquency attorney, if applicable.
- ◆ Child is entitled to counsel at all hearings; parents are entitled to counsel in proceedings regarding custody. M.G.L. c. 119, § 39F.
- ◆ Move to dismiss if the school fails to state in the petition the steps it has taken with the child/family to resolve the school-related issue. See M.G.L. c. 119, § 39E.
- ◆ In order to extend informal supervision after 90 days, probation may submit a form to the Judge if all parties agree and the child would prefer not to appear before the Judge.
- ◆ Remind the court to expunge the file in all cases dismissed prior to adjudication.
- ◆ Use the case conference, when appropriate, to subpoena relevant parties (e.g., DCF and school); draft written recommendations to the court regarding disposition.
- ◆ With permission of your client, advocate for services for the child such as:

DCF Services

- ⇒ Ensure that DCF abides by its regulations for providing assistance.
- ⇒ If DCF refuses to adjust placement or placement-related services for a child in its custody, consider filing an abuse of discretion motion. See Care and Protection of Isaac, 419 Mass. 602, 610-11 (1995).

Education Services

- ⇒ Consider requesting a special education evaluation for a child (603 CMR 28.04 (1)), that includes emotional or behavioral assessments in addition to intellectual/cognitive/educational evaluations. See 603 CMR 28.02.
- ⇒ Advocate for more appropriate school services for a child/client with disabilities. (See Quick Reference on Special Education Services.)
- ⇒ Even though DCF has temporary custody of a child through a CRA case, the parent usually retains the right to make education decisions. See 110 CMR 7.402.

Behavioral Health Services

- ⇒ MassHealth-eligible youth may receive home-based services though the Children's Behavioral Health Initiative (CBHI). (See Quick Reference on CBHI Services.)

RELEVANT CASELAW*

*These cases arose under the CHINS law, but their reasoning and the similarity of certain provisions of the CRA law suggest these cases remain valid.

- ◆ In re Angela, 445 Mass. 55, 55-56 (2005) (setting preponderance of the evidence as the standard at dispositional review hearings).
- ◆ In re Gail, 417 Mass. 321, 326 (1994) (overruled by In re Angela on other grounds) (holding that even if parent is petitioner, the parent "has no right or authority under the statute to withdraw the child from the proceedings" post-adjudication). But see M.G.L. c. 119, § 39G (permitting motions to dismiss prior to dispositional hearings).
- ◆ In re Hilary, 450 Mass. 491 (2008) (outlining the constitutional dimensions of a loss of custody by a parent in a CHINS case).
- ◆ In re Vincent, 408 Mass. 527, 531-32 (1990) (holding that judges in CHINS cases may only impose conditions on the child as part of conditions of custody and therefore judges may not hold a child in contempt for failure to abide by those conditions),

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 a project office in Boston. 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.

Contact and other information at www.clcm.org or 781-581-1977 (toll-free 1-888-KIDLAW8).

CLCM would like to acknowledge CPCS - CAFL and the MBA Juvenile and Child Welfare Section Council for their help on this Guide.



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