

## **RECOMMENDED CHANGES TO MASSACHUSETTS' LAWS**

MGL §119:32 requires that DCF place all children in private homes except in special circumstances. Evaluations are intended to be used to see if these special circumstances apply. However, long, repeated evaluations in secure facilities amount to unjustified imprisonment, and are in violation of the spirit of this well-meaning law. The full text of the current law is on the next page.

DCF's secure facilities should be brought into line with the laws restricting DYS facilities. Evaluation is not an excuse for indefinite imprisonment. In patching this loophole, it is important to ensure that we do not do more harm than good. DCF facilities should not rush to label a child as mentally ill simply to make it easier to find a future placement for him. In order to prevent this, DCF treatment facilities must be subject to the same legal appeals as other mental health facilities. The following text is adapted from MGL §119:39H and MGL §123:9.

Please amend MGL §119:32 to include the following:

**Prevention of Prolonged Institutionalization of Children in DCF  
Citation: MGL § 119:32 (Placement of Children in DCF), MGL § 119:39H (Detention and Right of Appeal of a Child who has been Arrested), MGL § 123:9 (Application for Discharge from a Mental Health Facility)**

No child may be detained for evaluation in an institution for more than 15 days without being brought before the court for a hearing on whether such detention should be continued for another 15 day period. If the court decides to so continue said detention, it shall note in writing the detailed reasons for its decision. Any child aggrieved by such decision shall have an immediate right to appeal to the superior court under the procedures set forth in Chapter 276, Section 58; provided further, however, that in no event shall any child be detained under this section for more than forty-five days.

Any child determined to be in need of mental health treatment which requires institutionalization shall have the right to apply for a commitment hearing under the procedures set forth in Chapter 123, Section 9(b). The institution in which the child resides shall inform the child and any interested adults of this right in a timely and appropriate manner. The institution may not use unreasonable means to prevent the child from applying for a commitment hearing.

- a. "Institution" means a public or private facility in the State which provides children with out of home care, supervision or maintenance. Institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, day care center, residential school, shelter and hospital.

- b. "Interested adults" means legal relatives and such others as may visit the child. An adult applying for a commitment hearing on behalf of a child is not guaranteed custody should the child be released from the facility.
  
- c. "Unreasonable means" includes but is not limited to: use of physical restraint, use of prolonged solitary confinement, denial of visitation with relatives, denial of access to materials or communication channels needed for the application, and willful misrepresentation of the process of applying for a commitment hearing.

**General Laws: Current Text of MGL § 119:32**

**PART I ADMINISTRATION OF THE GOVERNMENT**  
**(Chapters 1 through 182)**

**TITLE XVII PUBLIC WELFARE**

**CHAPTER 119 PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM**

**Section 32 Placement of children in private families; early and periodic screening, diagnostic and treatment standards; individualized health care plan**

Section 32. Children in the care or custody of the department shall be placed in private families; provided, that any child who upon examination is found to be in need of special care, treatment or education may, if it is found by the department to be in the best interest of the child, be placed in a public or private institution or school, the primary purpose of which is the special care, treatment or education of children. The reasons for the placement of any such child shall be entered in the records of the department.

The department shall insure that every foster child upon entry into the foster care system shall be screened and evaluated under the early and periodic screening, diagnostic and treatment standards established by Title XIX of the Social Security Act, unless the child has been screened and evaluated within 30 days prior to his entry into the system.

A medically needy child who is in foster care, whether specialized or other type of care as provided by the department or its agents, may not be placed in another foster home or other placement without an individualized health care plan that is unique to the child's health care needs; provided, however, that in an emergency due to abuse or neglect, the child may be removed without a plan. The plan shall include, but not be limited to: a

description of the specific health care needs of the child and specific treatment and services necessary to meet those needs; identification of health care agencies or personnel or other professionals who may conduct transitional training on the child's health care needs for the subsequent foster parents or other placement or the family to whom the child will return. The department shall also provide to the subsequent foster parents or other placement or to the family to whom the child will return information on health care resources available and health care and other personnel whose services are required by the child.