

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to juvenile mental health.

PETITION OF:

NAME:

Kay Khan

DISTRICT/ADDRESS:

11th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3881 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO JUVENILE MENTAL HEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) The department of mental health in collaboration with the department of youth
2 services and the department of public health is hereby authorized and directed to conduct a
3 comprehensive review of the mental health and substance abuse service needs of adolescents in
4 the care of or detained in the commonwealth through the order of a juvenile court, including
5 without limitation juveniles detained in the department of youth services or in the custody of the
6 department of social services, or receiving services from the department of mental health, the
7 court clinics, probation, or otherwise, and including without limitation any such departments,
8 offices, agencies or instrumentalities of the commonwealth, and any private organizations and
9 agencies operating under arrangement with departments or agencies of the commonwealth. To
10 complete said review, the department of mental health, department of youth services, and
11 department of public health shall solicit input from the office of probation, the department of
12 social services, the department of education, the juvenile court, juvenile court clinics, the
13 committee for public counsel services, the department of mental retardation, the division of
14 insurance, the division of medical assistance, the Massachusetts Association of District
15 Attorneys, at least one individual representing the interests of parents and families, at least one
16 advocate for juvenile justice, at least one representative of a service provider community, and at
17 least one representative from the Massachusetts Association of Health Plans. Said review shall
18 be for purposes of identifying the following:

19

20 (i) existing and proposed models of alternatives to detention, within and outside the
21 commonwealth, of providing mental health and substance abuse services to juveniles in
22 detention, and as alternatives to detention; community resources and other dependencies
23 which affect the appropriateness and effectiveness of models of alternatives to detention;

24 and data demonstrating the relative efficacy, cost-effectiveness, and effect on public
25 safety of alternative models;

26 (ii) unmet mental health and substance abuse needs of juveniles within the juvenile court
27 systems of the commonwealth, including an explicit comparison of the best practices and
28 models identified in paragraph (a) of this section with services and models available in
29 the commonwealth;

30

31 (iii) recommendations for addressing unmet needs, including without limitation through
32 the court clinics of the juvenile courts, and through contracting by the department of
33 mental health for community-based services through community providers, or through
34 consortia of community providers, local government agencies and others operating in
35 congruence with local courts involved in the juvenile justice system.

36

37 (b) Within sixty days after the effective date hereof, the department shall post to its external
38 website, for thirty days public comment, a proposed work plan to gather information necessary to
39 prepare the report required by this section, in consultation with clinical, philanthropic and
40 advocacy organizations for children, and providers of mental health and substance abuse services
41 for minors. The proposed work plan shall be directed to submit a final report to the legislature
42 and the governor no later than two hundred and seventy days after the effective date of this act.

43

44 (c) Within ninety days after the effective date of this act, the department shall post its final work
45 plan on its external website.

46

47 (d) Within two hundred and ten days after the effective date of this act, the department shall post
48 on its external website, for public comment, a draft report responsive to this section.

49

50 (e) Within two hundred and seventy days after the effective date of this act, the department shall
51 post on its external website a final report responsive to this section, including a summary of all
52 public comments received, and responses to such comments. The department shall also that day
53 provide a copy of its final report to the governor, the president of the senate, the speaker of the
54 house of representatives, the chairs of the joint committees on mental health and substance
55 abuse, and children and families, and the legislative mental health caucus.

56

57 SECTION 2. Chapter 119 of the General Laws as appearing in the 2004 Official Edition is
58 hereby amended by inserting after section 68C the following section:

59

60 68D. The purpose of the "diagnostic assessment" authorized in section 68A, above, is to provide
61 a screening, evaluation and service planning system so as to provide the Juvenile Court with
62 information regarding the needs of juveniles before the Court in delinquency matters, so as to
63 assure the appropriate use of detention, and provide the Court a method for assuring that those
64 juvenile defendants with mental health or substance abuse issues who may be safely maintained

65 in their communities are not detained in locked detention settings during the pendency of
66 delinquency or Youthful Offender proceedings. Evaluation under this section and Section 68A
67 shall require consent of the juvenile defendant's parent or legal guardian and, through the
68 defendant's counsel, the juvenile. Should consent be withdrawn during the period of evaluation,
69 the evaluation shall be suspended until the matter can be brought back before the court.

70 A juvenile may not be held in detention, except as pursuant to chapter 276 sections 58 or 58A.
71 Within amounts appropriated by the legislature for these purposes, where the Court is
72 considering an order of detention for evaluation of a juvenile defendant in a locked detention
73 setting pursuant to 68A, the juvenile shall receive on the same court day and prior to issuance of
74 an order of detention a preliminary screening by a juvenile court clinician to make
75 recommendations to the court on matters relevant to the further evaluation of the juvenile; the
76 report to the court regarding the results of this screening shall include a recommendation on
77 whether the evaluation ordered by the Court pursuant to 68A may be completed in a less
78 restrictive environment than a locked facility, and whether the immediate needs of the juvenile
79 warrant further examination for possible hospitalization for clinical care. The Court shall then
80 order the evaluation pursuant to 68A to occur in the least restrictive environment. The report of
81 the screen to the court shall not include statements of self incrimination and shall include only
82 information relevant to the recommendation to be offered to the court regarding the setting for
83 further evaluation. No additional information shall be released without an order from the court,
84 except as to defense counsel.

85

86 A juvenile shall not be held in a locked detention facility of the Department of Youth Services
87 for 68A evaluation unless the Court makes findings that failure to detain in a locked detention
88 facility would pose a substantial risk of failure to appear for future hearings before the Court on
89 the delinquency or Youthful Offender matter. Unless these findings are made, the Court shall
90 order the 68A evaluation to occur in the least restrictive setting reasonably available including,
91 but not limited to, the Court Clinic or a program to which the youth is assigned as an alternative
92 to a locked detention setting. Orders of recognizance may not be revoked and a juvenile detained
93 in a locked detention facility solely for failure to comply with the 68A examination; provided,
94 however, that once a 68A evaluation is ordered the examiner shall complete the evaluation if so
95 directed by the Court with information from other sources should the juvenile decline interview
96 or other direct participation. Revocation of orders of recognizance or bail and a subsequent order
97 for detention in a locked DYS facility shall occur only upon additional findings by the Court that
98 failure to detain would result in: (a) substantial risk of failure to appear in the delinquency or
99 Youthful Offender matter; or (b) findings of dangerousness made following proceedings in
100 accordance with Ch. 276 sections 58 and 58A. Provided, however, that if a likelihood of serious
101 harm to self or other is by reason of mental illness or substance abuse, the Court shall proceed
102 under the provisions of MGLc. 123, sections 12, 15 or 35.

103

104 The order for further 68A examination following the screening shall specify one or more referral
105 questions for response by the qualified examiner. Defense counsel shall be afforded an
106 opportunity to object to referral questions and to suggest referral questions; provided, however,
107 that forensic examination of Competency to Stand Trial and Criminal Responsibility cannot be
108 ordered as part of a 68A evaluation in lieu of proceedings under Chapter 123, section 15. In

109 addition to the forensic mental health examination by a qualified examiner, the court may also
110 order screenings for substance use.

111

112 The examiner shall submit within 20 days of the 68A order a written report of the 68A
113 examination to the court and to defense counsel; provided, however, that the examiner may
114 request the court to authorize an additional 20 days if the examination cannot be completed
115 within the first period of 20 days. Upon filing of the report with the court and defense counsel,
116 before the 68A report is provided to the prosecution, probation or any other person or entity, the
117 juvenile's counsel shall be afforded an opportunity for prior review of the report and to request a
118 hearing before the court should defense counsel want to request of the court that portions of the
119 report be redacted or subject to protective order as being privileged, not material to or otherwise
120 admissible in the instant proceeding, before a copy is provided to the prosecution. Further release
121 of the 68A examination report beyond the Juvenile Court, Probation, defense counsel, the
122 prosecution, and the parents or legal guardian of the juvenile shall require an order of the
123 Juvenile Court identifying the persons or entities to receive copies of the report and the purpose
124 for which the report is being released by the Court.

125

126 Whether conducted while in a locked DYS detention facility or a less restricting setting, the 68A
127 examination report shall offer responses to the referral questions and be sufficient to identify
128 such services as might be required to meet the mental health and substance abuse needs of the
129 juvenile during the pendency of the delinquency or Youthful Offender proceedings. The report of
130 the 68A examination shall include recommendations regarding what, if any, mental health,
131 substance abuse, child protection, educational or other services the juvenile may require to be
132 maintained in the community during the pendency of the delinquency or Youthful Offender
133 proceedings and needed for ongoing care, intervention or treatment. The examiner shall not
134 inquire about open or uncharged delinquency or Youthful Offender charges without prior
135 authorization to do so by defense counsel for the juvenile.

136

137 Upon review of the 68A examination report and the recommendations of the examiner, the court
138 may consider the report in determining an alternative to detention under Section 68 of this
139 Chapter. On motion of counsel for the juvenile, or in the court's own discretion, the court may
140 refer the child to the Department of Mental Health or other relevant state agency for the receipt
141 of services as an alternative to detention in a locked DYS setting, subject to the child's
142 substantial compliance with the terms of the interim service plan authorized by the court during
143 the proceedings if necessary to assure the child's appearance in court. No information obtained
144 in the course of the 68A screening, 68A examination or the provision of services subsequently
145 recommended and ordered by the court may be introduced as a confession by the juvenile nor
146 used in the prosecution of the case in chief, or any other proceeding, against the juvenile
147 defendant, nor may any of the information be used in disposition unless some part of the report is
148 first offered by counsel for the juvenile

149

150 When conducted and other than a DYS operated setting and within amounts appropriated
151 therefore by the legislature, the Department of Mental Health or other relevant state agency, or
152 qualified provider of mental health, substance abuse or other services acting under arrangement

153 with the Department or other relevant state agency, shall within 24 hours of referral from the
154 Juvenile Court begin to formulate and implement a care and intervention plan. This plan shall
155 include as relevant to each case a plan for the coordination of mental health, substance abuse,
156 educational, social service and other service providers, and where to place the juvenile until said
157 court date. This coordination plan shall include designation of a case manager or other
158 appropriate care coordination mechanism, services to address the child's mental health and
159 substance abuse service needs, and a mechanism to report on the juvenile's progress and the
160 effective collaboration of state agencies, educational authorities, service providers, and others
161 contributing to meeting the clinical care needs of the child for so long as the juvenile is the
162 subject of Juvenile Court proceedings.

163

164 Nothing in this chapter shall preempt the presumption of personal recognizance or any of the
165 requirements of sections 58 and 58A of chapter 276.

166

167 SECTION 3. Chapter 123 of the General Laws as so appearing is hereby amended by inserting
168 after section 16 the following section:--

169

170 16A. Alternatives to detention for minors in juvenile justice proceedings

171

172 (a) Within amounts appropriated therefore, the department shall contract with eligible providers
173 of mental health services for provision of adequate and effective mental health and substance
174 abuse services for minors referred for evaluation and services pursuant to sections 68D of
175 chapter 119 of the General Laws, for whom the provision of mental health and substance abuse
176 services, delivered in a timely and appropriate manner in an outpatient or inpatient setting, would
177 ameliorate mental health or substance abuse needs and, as ordered by the court, dispense with the
178 need for detention in a facility under the direction of the department of youth services or
179 otherwise.

180

181 (b) For purposes of this section, "eligible providers" shall mean appropriately qualified
182 residential and non-residential providers of pediatric mental health services; local government
183 mental health agencies or authorities; or local or regional consortia of such providers, agencies or
184 authorities, operating within cooperative arrangements with, as the case may be, local offices of
185 probation, law enforcement, community health organizations, or public health agencies, and
186 court-associated clinic services. Such consortia may allocate diagnostic and therapeutic services
187 among them in a locally or regionally appropriate and effective manner, provided that the
188 evaluation and services for a given juvenile will be managed by a continuously dedicated case
189 manager and, in the department's judgment, that the networked allocation of evaluation and
190 services will be as or more effective than competing applications for the same region or locality.
191 Eligible providers shall also be equipped to provide academic and recreational services as
192 necessary and appropriate for the service needs of youth referred to them. Eligibility criteria for
193 services shall be established by the department of mental health in consultation with the Juvenile
194 Mental and Behavioral Health Coordinating Committee, established by this section.

195

196 (c)The department(s) shall engage sufficient numbers of qualified providers, sufficiently
197 distributed within the state, to timely meet the mental health service needs of minors referred by
198 the court for evaluation, assessment, and services pursuant to section 68D of chapter 119 of the
199 General Laws.

200

201 (d) To implement the requirements of this section, the department shall within 60 days after the
202 effective date of this act, and within 60 days after the effective date of any subsequent
203 appropriation directed to this purpose in any fiscal year other than appropriations directed to the
204 continuation of previous contracts, issue and disseminate, including posting on its external
205 website, a draft request for information, or request for proposals as the case may be, for public
206 comment. Thirty days thereafter, the department shall close the public comment period, and no
207 later than ninety days thereafter issue a request for information or proposals, as the case may be,
208 soliciting contracting proposals under this section. Before issuing the draft request for
209 information, or proposals as the case may be, the department shall consult with and seek
210 comment from pertinent departments of the commonwealth, and pertinent providers, agencies,
211 authorities and associations involved with the provision of pediatric mental health and substance
212 abuse services, or the juvenile justice system, or advocacy for children, including at least the
213 following, which the department shall seek to assemble and constitute in a continuing advisory
214 capacity denominated the juvenile mental and behavioral health coordinating committee: the
215 chief of probation, the chief justice of the juvenile court, the commissioner of public health, the
216 commissioner of social services, the commissioner of youth services, the commissioner of
217 education, the commissioner of early education, the commissioner of mental retardation, the
218 commissioner of insurance, the director of the division of medical assistance, one representative
219 of court clinic services, one representative from the committee for public counsel services, one
220 representative from the Massachusetts Association of District Attorneys, one individual
221 representing the interests of parents and families, one advocate for juvenile justice, one
222 representative of the service provider community, and one representative from the Massachusetts
223 Association of Health Plans.

224

225 (e) Proposals shall be solicited and evaluated by the department based on the criteria established
226 in consultation with the juvenile mental and behavioral health coordinating committee.
227 Successful applicants shall be required to have demonstrated that they will timely provide
228 appropriate mental health and substance abuse services that, based on data submitted with their
229 proposal, are reasonably anticipated to reduce the necessity of detention in facilities operated by
230 or under the authority of the department of youth services through diagnosis and treatment of the
231 juveniles' mental health and substance service needs. Proposals shall address all matters required
232 under section 68D of chapter 119 of the General Laws. The department shall also require
233 applicants to identify the extent to which they have provided for local input from and
234 coordination with local and regional government agencies and authorities, community
235 organizations, and philanthropic organizations concerned with mental health services for minors,
236 and community safety.

237

238 (f) The department shall annually report to the governor, the president of the senate, the speaker
239 of the house of representatives, the joint committee on mental health and substance abuse, the
240 joint committee on children and families and the legislative mental health caucus on its
241 compliance with this section, including the extent to which actions taken by the department, or
242 contractors under this section, have failed to comply with the requirements of this section, and
243 have not addressed all needs for such mental health and substance abuse services. The report
244 shall also include the department's efforts to demonstrate the effectiveness of such programs on
245 reducing detention in other facilities in the commonwealth not under the jurisdiction of the
246 department while maintaining the public safety. The report shall further include the impact that
247 the implementation of section 68D has on the department's other responsibilities with regard to
248 forensic mental health services, including but not limited to the impact on the juvenile court
249 clinics, and the impact of said implementation on the daily census of detained youth in the
250 department of youth services. The report shall be publicly available, and shall be posted by the
251 department on its external website.

252

253 SECTION 4. Upon approval by the legislature and subject to appropriation, the procedure for
254 screening and 68A evaluation shall be implemented as a pilot in the Springfield Juvenile Court
255 for a period of eighteen months. At the conclusion of the eighteen month pilot, a joint report
256 from the Department of Mental Health, Department of Youth Services and the Committee for
257 Public Counsel Services shall be submitted to the Secretary of the Executive Office of Health
258 and Human Services, the Legislature and the Chief Justice of the Juvenile Court reporting on the
259 outcome of the pilot implementation and any recommendations. Upon filing of the report, further
260 statewide implementation of the statute shall be stayed until authorizing legislation is passed.