

HOUSE No. 1247

The Commonwealth of Massachusetts

PRESENTED BY:

Claire D. Cronin

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 adoption of the accompanying bill:

An Act to promote child well-being, community supervision and efficient use of state resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>

HOUSE No. 1247

By Ms. Cronin of Easton, a petition (accompanied by bill, House, No. 1247) of Claire D. Cronin and others relative to juvenile court jurisdiction to divert from further court processing of certain children. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote child well-being, community supervision and efficient use of state resources.

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. Chapter 119 of the General Laws, as so appearing, is hereby amended by
2 inserting after section 85 the following new sections:-

3 Section 86. The following words, as used in the following sections, except as otherwise
4 provided, shall have the following meanings:—

5 “Assessment”, a thorough and complete measurement of the needs of a child in, but not
6 limited to, the following areas: education, vocational training, job readiness, housing, behavioral
7 and physical health, family and social services, and an analysis of a child’s willingness to
8 participate in a diversion program.

9 “Official designee”, a representative of a community program who has been approved by
10 the presiding justice of a juvenile court to work in conjunction with that court’s probation office
11 to screen children who may be eligible for diversion.

12 “Program”, any program of community supervision and services certified or approved by
13 the commissioner of probation under the provisions of section ninety-three, including, but not
14 limited to, medical, educational, vocational, social and psychological services, corrective and
15 preventive guidance, training, performance of community service work, counseling, and other
16 rehabilitative services designed to protect the public and benefit the individual.

17 Section 87. The juvenile court shall have jurisdiction to divert from further court
18 processing any child who is subject to the jurisdiction of the juvenile court as the result of a
19 complaint or indictment brought under Section 54 of this Chapter, and who has received a
20 recommendation from the Department of Probation or a Program, as described in Section 89, that
21 diversion to the community or a Program is appropriate.

22 Section 88. The probation officer of a juvenile court shall, after the appointment of
23 counsel and upon the request of counsel, and prior to arraignment, complete an Assessment of
24 each child complained of as a delinquent child or youthful offender for the purpose of enabling
25 the judge to consider the suitability of the child for diversion to the community or a Program
26 prior to arraignment. The Department of Probation shall, in consultation with the advisory board
27 at Section 94, develop a tool to conduct such Assessment that is research-based and aligned with
28 best practices in the field.

29 If the child or the probation officer requests it, the court may offer a continuance of up to
30 fourteen-days to allow for additional time for the Assessment by the Department of Probation or,
31 where the judge determines it is appropriate, the personnel of a Program to determine if the child
32 would benefit from such program. If such a continuance is granted, the judge shall direct the

33 child to the probation officer for further assessment or, where applicable, to a Program for such
34 assessment, and shall inform said probation officer or Program of such action.

35 If a case is continued under this section, the child shall not be arraigned and no entry will
36 be made into the CORI systems until such time as a Justice of the Juvenile Court so orders for
37 the purposes of resuming the ordinary processing of a delinquency or youthful offender
38 proceeding.

39 Section 89. After the completion of the Assessment, or upon the expiration of a
40 continuance granted pursuant to section 88, the probation officer or, where applicable, the
41 director of a Program to which the child has been referred, shall submit to the court a
42 recommendation as to whether the child would benefit from diversion to the community or a
43 Program.

44 The judge, upon receipt of the recommendation, shall provide an opportunity for a
45 recommendation by the prosecution regarding the diversion of the child. After receiving the
46 report and having provided an opportunity for the prosecution to make its recommendation, the
47 judge shall make a final determination as to the eligibility of the child for diversion. There shall
48 be a rebuttable presumption that a child who is charged with a misdemeanor for which the
49 punishment is a fine, imprisonment in a jail or house of correction for not more than six months,
50 or both such fine and imprisonment, and who does not have any outstanding warrants,
51 continuances, appeals or juvenile court cases pending, shall be found eligible for diversion.

52 The proceedings of a child who is found eligible for diversion under section 87 shall be
53 stayed for a period of ninety days, unless the judge in his discretion considers that the interest of
54 justice would best be served by a lesser period of time.

55 In no event shall a stay of proceedings be granted pursuant to this section unless the child
56 consents in writing to the terms and conditions of the stay of proceedings and knowingly
57 executes a waiver of his right to a speedy trial on a form approved by the chief justice of the
58 juvenile courts. Such consent shall be with the advice of the child's counsel. Any request for
59 assessment, or a decision by the child not to enter a program, or a determination by probation or
60 by a program that the child would not benefit from diversion, or any statement made by the child
61 during the course of assessment, shall not be admissible against the child in any proceedings; nor
62 shall any consent by the child to the stay of proceedings or any act done or statement made in
63 fulfillment of the terms and conditions of such stay of proceedings be admissible as an
64 admission, implied or otherwise, against the child, should the stay of proceedings be terminated
65 and proceedings resumed on the original complaint or indictment. No statement or other
66 disclosure or records thereof made by a child during the course of assessment or during the stay
67 of proceedings shall be disclosed at any time to a prosecutor or other law enforcement officer in
68 connection with the investigation, or prosecution of any charge or charges against said child or
69 any co-defendant.

70 If a child has been found eligible for diversion under this section, the child shall not be
71 arraigned and no entry will be made into the CORI systems until such time as a Justice of the
72 Juvenile Court so orders for the purposes of resuming the ordinary processing of a delinquency
73 or youthful offender proceeding.

74 Section 90. A district attorney may, in his discretion, divert any child to the community
75 or a Program either before or after the assessment procedure set forth in section 88, with or
76 without the permission of the court. A district attorney who diverts a case pursuant to this

77 section may request a report from a Program regarding the child's status in and completion of
78 such Program.

79 Section 91. During a stay of proceedings, as provided in section 89, the juvenile
80 probation officer for the court shall submit periodic reports to the court relative to the progress of
81 the child and shall report subsequent arrests immediately upon notice thereof.

82 If the child during the stay of proceedings is charged with a subsequent offense, a judge
83 in the court that entered the stay of proceedings may issue such process as is necessary to bring
84 the child before the court. When the child is brought before the court, the judge shall afford him
85 an opportunity to be heard. If the judge finds probable cause to believe that the child has
86 committed a subsequent offense, the judge may order, when appropriate, that the stay of
87 proceedings be terminated and that the commonwealth be permitted to proceed on the original
88 complaint or indictment as provided by law.

89 Section 92. Upon the expiration of the initial ninety-day stay of proceedings the probation
90 officer of the juvenile court shall submit to the court a report indicating the successful
91 completion of diversion by the child or recommending an extension of the stay of proceedings
92 for not more than an additional ninety days, so that the child may complete the diversion
93 program successfully.

94 If the report indicates the successful completion of diversion by a child, the judge may
95 dismiss the original complaint or indictment pending against the child. If the report recommends
96 an extension of the stay of proceedings, the judge may, on the basis of the report and any other
97 relevant evidence, take such action as he deems appropriate, including the dismissal of the
98 complaint or indictment, the granting of an extension of the stay of proceedings or the

99 resumption of proceedings. In the event that an extension of the stay of proceedings is granted,
100 the probation officer shall submit a final report upon the expiration of such stay of proceedings.

101 If the judge dismisses a complaint or indictment under this section, the court shall enter
102 an order directing expungement of any records of the complaint or indictment and related
103 proceedings maintained by the clerk, the court, the department of criminal justice information
104 services, the court activity record index and the probation department that directly pertain to the
105 complaint or indictment.

106 Section 93. The office of the Commissioner of Probation shall, in its discretion, certify,
107 monitor and aid all programs to which children may be diverted pursuant to this chapter. The
108 office of the commissioner of Probation shall, in its discretion, (a) issue for a term of two years,
109 and may renew for like terms, a certification, subject to revocation for cause, to any person,
110 partnership, corporation, society, association or other agency or entity of any kind, other than a
111 licensed general hospital or a department, agency or institution of the federal government, the
112 commonwealth or any political subdivision thereof, deemed to be responsible and suitable to
113 establish and maintain such a program and to meet applicable certification standards and
114 requirements; and in the case of a department, agency or institution of the commonwealth or any
115 political subdivision thereof, grant approval to establish and maintain a program for a term of
116 two years, and may renew such approval for like terms, subject to revocation for cause; (b)
117 promulgate, in consultation with the advisory board established in section 94, rules and
118 regulations establishing certification and approval standards and requirements; (c) establish
119 limits for caseloads and enrollment so that programs are able to provide high quality intensive
120 individualized service to those children participating in such programs; (d) procure, where
121 appropriate, by contract, the personnel, facilities, services, and materials necessary to carry out

122 the purposes of this act, subject to all applicable laws and regulations; (e) prepare reports for said
123 advisory board showing the progress of all programs in fulfilling the purposes set forth; (f) notify
124 the appropriate presiding justice of the individual court that adequate facilities and personnel are
125 available to fulfill an appropriate array of programs and services for that court; (g) provide
126 technical assistance to such program as may be certified hereunder; (h) provide for the audit of
127 any funds expended by the office for the support of programs certified hereunder; (i) promote the
128 cooperation of all agencies which provide education, training, counseling, legal, employment, or
129 other services to assure that eligible individuals diverted to programs may benefit to the
130 maximum extent practicable; (j) prepare and submit an annual report to the chief justices of the
131 supreme judicial, appeals, and juvenile courts and to all justices in the juvenile court system
132 evaluating the performance of all programs.

133 Section 94. There shall be an advisory board to the office of the Commissioner of
134 Probation for the overseeing of programs. The members of the advisory board shall be the
135 commissioners of education, mental health, children & families, youth services, a juvenile court
136 judge, the Child Advocate, the president of the Massachusetts District Attorney's Association,
137 the Chief Counsel of the Committee for Public Services, or their respective designees, and five
138 experts in the area of human services to the sociologically and economically disadvantaged
139 through community based programs to be appointed by the governor for terms of two years, one
140 of whom shall be an individual between the ages of 18 and 24 who has previously been subject
141 to the jurisdiction of the juvenile court. The members of the advisory board shall serve without
142 compensation but shall be reimbursed for their expenses actually and necessarily incurred in the
143 discharge of their duties. The advisory board shall annually select its chairman from among its
144 members.

145 The advisory board shall assist the commissioner in coordinating the efforts of all public
146 agencies and private organizations and individuals within the commonwealth concerned with the
147 providing of services to defendants by said programs.