

SENATE No. 46

The Commonwealth of Massachusetts

PRESENTED BY:

Katherine M. Clark, (BY REQUEST)

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 reforming the department of children and families.

PETITION OF:

NAME:

Caroline Mallary

DISTRICT/ADDRESS:

625 Main St Apt 9

Reading, MA 01867

SENATE No. 46

By Ms. Clark (by request), a petition (accompanied by bill, Senate, No. 46) of Caroline Mallary for legislation to reform the department of children and families. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to reforming the department of children and families.

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 6A of the General Laws, as most recently amended by chapter 240
2 of the acts of 2012, is hereby amended by inserting at the end the definition of “community-
3 based services” the following phrase:-

4 “Community-based services” shall not include inpatient treatment centers or residential
5 programs which meet the definition of a secure program as defined in section 21 of chapter 119
6 of the General Laws.”

7 SECTION 2. Section 21 of chapter 119 of the General Laws, as so appearing, is hereby
8 amended by striking out the word “18” in the definition of “child requiring assistance” and
9 inserting in place thereof the following word:- “17”

10 SECTION 3. Section 21 of chapter 119 of the General Laws, as so appearing, is hereby
11 amended by inserting at the end of (iv) the following subclause:-

12 (v) who is not currently the victim of abuse, neglect, severe harassment, or unmet
13 medical or educational needs.

14 SECTION 4. Section 21 of said chapter 119, as most recently amended by chapter 240 of
15 the acts of 2012, is hereby amended by adding to the definition of “Habitually Truant” the
16 following text:-

17 “whose educational needs are being met at his school, who is not believed to be severely
18 harassed or bullied at his school, and who has been unable or unwilling to meet the requirements
19 for early graduation.”

20 SECTION 5. Section 39E of said chapter 119, as so appearing, is hereby amended by
21 striking the subclauses (ii) and (iii) of clause (1) of subsection (a) and inserting in place thereof
22 the following subclauses:-

23 (ii) that the child is under the age of 18; and (iii) that the child is not currently the victim
24 of abuse, neglect, severe harassment, or unmet medical or educational needs; and (iv) that the
25 child and such child's family require assistance

26 SECTION 6. Section 39E of said chapter 119, as so appearing, is hereby amended by
27 inserting at the end of clause (3) of subsection (a) the following subclauses:-

28 (iii) if the child has complained of bullying or harassment at school any time within the
29 last year, the request for assistance shall include a statement of the specific steps taken by the
30 school to mitigate bullying or harassment; and

31 (iv) if the child has any special educational needs, including the need for education which
32 is significantly above or below the child's current grade level, or if the child is not fluent in
33 English, the request for assistance shall include a statement of the specific steps the school has
34 taken to ensure the child is offered education which is appropriate to the child's abilities. The
35 statement must note whether the child or child's parent, legal guardian, or custodian has
36 requested special education within the last two years and been denied. If the school is unable to
37 provide education at a level appropriate to the child's abilities, the request for assistance must
38 note whether the school recommended any alternative schools which are able to provide
39 appropriate education. For the purpose of this section, extracurricular or after-school programs
40 shall not be considered alternative schools, and shall not fulfill the obligation of the school to
41 provide appropriate education to every child.

42 (v) The request for assistance must state that the school has seen no evidence that the
43 child is being abused, neglected, or severely harassed inside or outside of school. If possible, the
44 school must interview the child about any possible abuse, neglect, or harassment no more than
45 three weeks prior to filing a request for assistance, and must include notes from such an
46 interview in the request for assistance. If it is not possible to interview the child, the request for
47 assistance must include the reason an interview was not possible. Any such interview must
48 question the child about lack of adequate food, clothing, shelter, sleep or medical care, must ask
49 the child about his reasons for truancy or poor conduct, and must ask the child to propose a
50 solution to any truancy or conduct issues. No such interview shall assume that an overweight
51 child has adequate food, or that a child is willfully refusing to sleep or wear adequate clothing.
52 A child who gives inadequate reasons for his truancy or poor conduct shall not be assumed to
53 have no reason for truancy or poor conduct, if there is evidence that the child is being abused,
54 neglected, or severely harassed. The child must be informed of the purpose of the interview and
55 of any recording devices present, and may request that any recording devices be turned off. The
56 school must make a good faith effort to conduct the interview in a manner unlikely to cause

57 unnecessary stress, evasion, or untruthful answers. If the interviewer believes a child's answer is
58 untruthful, misleading, or incomplete, the interviewer must make a detailed note of why the
59 answer appears untruthful, misleading, or incomplete.

60 SECTION 7. Section 39E of said chapter 119, as so appearing, is hereby amended by
61 striking clause (3) of subsection (a) and inserting in place thereof the following:-

62 "refer the child to an appropriate public or private organization or person for psychiatric,
63 psychological, educational, occupational, medical, dental or social services, provided that such
64 an organization does not qualify as a secure program;"

65 SECTION 8. Section 39E of said chapter 119, as so appearing, is hereby amended by
66 inserting at the end of clause (4) of subsection (a) the following subclause:-

67 (iv) Additionally, the request for assistance must include a signed statement that the
68 parent, legal guardian, or custodian believes that:

69 i) the child is consistently provided with adequate food, shelter, clothing, rest, and
70 medical care; and

71 ii) the child has no medical conditions which may be interfering with the function of the
72 family unit; and

73 iii) the child's current school provides adequate and appropriate education and the child
74 is able to travel to and from school safely; and

75 iv) the child is not being severely harassed or abused by anyone inside or outside the
76 home; and

77 v) the child has not been exposed to domestic violence, drug abuse, alcohol abuse, or
78 criminal activity inside the home within the last year, or that any member of the home who
79 exposed the child to these activities is receiving treatment or no longer lives in the child's home.

80 SECTION 9. Section 39E of said chapter 119, as so appearing, is hereby amended by
81 inserting between the sentence beginning "the recommendation of such probation officer" and
82 the sentence beginning "the clerk or the judge" following sentences:-

83 "The child must be informed of the nature of the proceedings and must be informed of
84 any conditions the child can meet to avoid further proceedings. The clerk or judge must make a
85 good faith effort to be accommodating of conduct which is due to the child being confused,
86 misled or frightened."

87 SECTION 10. Section 39E of said chapter 119, as so appearing, is hereby further
88 amended by striking out the fourth paragraph and inserting in place thereof the following
89 paragraph:-

90 “At the conclusion of the probable cause hearing, the clerk shall set a date for a fact
91 finding hearing not more than 90 days from the date the request for assistance was filed, and not
92 more than 15 days from the date the request for assistance was filed if the child is currently
93 residing in a secure program. The court may postpone the fact finding hearing upon the request
94 of the parent, legal guardian, custodian, child, petitioner or probation officer for an additional 90
95 days after the expiration of the initial 90 day period, provided that the child is not currently
96 residing in a secure program.”

97 SECTION 11. Section 39F of said chapter 119, as so appearing, is hereby amended by
98 inserting between the sentence beginning “the court shall appoint counsel for the child” and the
99 sentence beginning “the clerk shall cause” the following sentence:-

100 “The child shall be informed that the child’s counsel is obligated to represent the child’s
101 wishes, independent of the wishes of the child’s parent, legal guardian, or custodian.”

102 SECTION 12. Section 39H of said chapter 119, as most recently amended by chapter 240
103 of the acts of 2012, is hereby amended by inserting between the sentence beginning “The court
104 shall not order the child” and the sentence beginning “Prior to the court granting” the following:-

105 “The court may not order the child to be placed in a secure program if there is evidence
106 that the child has been neglected, abused, or severely harassed, or if the child does not have a
107 history of running away from non-abusive placements, or if the request for assistance was filed
108 due to truancy only.”

109 SECTION 13. Section 39G of said chapter 119, as most recently amended by chapter 240
110 of the acts of 2012, is hereby amended by inserting at the end of the third paragraph after the
111 sentence beginning “Such child may, however, be placed in a facility which operates as a group
112 home” the following:-

113 “A child who is the subject of a request for assistance may not be placed in a secure
114 program if there is evidence that the child has been neglected, abused, or severely harassed, or if
115 the child does not have a history of running away from non-abusive placements, or if the request
116 for assistance was filed due to truancy only.”

117 SECTION 14. Section 39G of said chapter 119, as most recently amended by chapter 240
118 of the acts of 2012, is hereby further amended by striking the first sentence of the first paragraph
119 and inserting the following:-

120 “At any hearing held to determine whether a child and family require assistance, the child
121 and his attorney shall be present and shall be given an opportunity to be heard, and the parent,
122 legal guardian or custodian shall be given an opportunity to be heard. The court must make a
123 good faith effort to be accommodating of conduct which is due to the child being confused,
124 misled, or frightened. The petitioner who files the request for assistance shall bear the burden of

125 presenting evidence, proving by clear and convincing evidence, that the child and family require
126 assistance, and that the child is not the victim of abuse, neglect, severe harassment, or unmet
127 medical or educational needs.”

128 SECTION 15. Section 39G of said chapter 119, as most recently amended by chapter 240
129 of the acts of 2012, is hereby further amended by inserting into the first sentence of the third
130 paragraph after the words “child and the child’s attorney shall be present” the following:- “and
131 shall be given an opportunity to be heard”.

132 SECTION 16. Paragraph (2) of subsection (b) of section 39G of said chapter 119, is
133 hereby amended by adding after the text “a private or charitable or childcare agency or other
134 private organization, licensed or otherwise authorized by law to receive and provide care for
135 such child” the following:- “provided that such an organization does not qualify as a secure
136 program, unless the child has a history of running away from non-secure, non-abusive
137 placements. Any such placement or placements may not be in a secure program or programs for
138 more than 45 consecutive days, and no more than 120 days per year”.

139 SECTION 17. Subsection (c) of section 39G of said chapter 119, is hereby amended by
140 appending to the following sentence “The department shall direct the type and length of such
141 out-of-home placement” the following:-

142 “provided that such placement shall not be in a secure program unless the child has a
143 history of running away from non-secure, non-abusive placements. Any such placement or
144 placements may not be in a secure program or programs for more than 45 consecutive days, and
145 no more than 120 days per year, unless the department applies to the court for an extension of the
146 order of disposition as described in section 39X. The department must make provisions for the
147 child to be released from any secure program within the 45-day time limit. If a non-secure
148 program cannot be found within 45 days, the child’s current placement must make non-secure
149 accommodations for him, including allowing the child to attend public school. Under penalty of
150 perjury, the department and staff of residential programs may not make false reports of the child
151 attempting to run away in order to subvert this clause. Any department employee or program
152 staff who reports that the child attempted to run away must submit a signed document to the
153 court giving evidence that the child attempted to run away, and must state a genuine belief that
154 the child was unlikely to return within 12 hours or return before serious harm came to him;”

155 SECTION 18. Section 39G of said chapter 119, as recently amended by chapter 240 of
156 the acts of 2012, is hereby amended by appending to the phrase “payment for such services shall
157 not be denied if the treatment or services otherwise meet the criteria for coverage” the
158 following:- “provided that the treatment does not take place in a secure program when equivalent
159 treatment is available in non-secure settings.”

160 SECTION 19. Section 39G of said chapter 119, as recently amended by chapter 240 of
161 the acts of 2012, is hereby amended by inserting after the sentence ending “regardless of whether
162 juveniles adjudicated are also provided care in such facility” the following:-

163 “Such a child may not be placed in a secure program if there is evidence that the child has
164 been neglected, abused, or severely harassed, or if the child does not have a history of running
165 away from non-abusive placements, or if the request for assistance was filed due to truancy
166 only.”

167 SECTION 20. Section 39G of said chapter 119, as recently amended by chapter 240 of
168 the acts of 2012, is hereby amended by striking out, in line 49, the phrase “90 days” and inserting
169 the phrase “45 days”.

170 SECTION 21. Section 39G of said chapter 119, shall be hereby amended by adding, after
171 the third paragraph, the following paragraph:-

172 “The court may only consider an extension if it finds that the child has not being abused,
173 neglected, or severely harassed in any placement since the original request for assistance.
174 Additionally, if the child is currently placed in a secure program, the court must consider
175 whether the child exhibits signs of emotional or social deprivation, constant fear, mania or
176 dissociation that may be the result of placement in a secure program. Any residential program in
177 which the child has been placed must submit a report of the number of restraints and escorts
178 performed on the child and other residents while the child was in the program. If any restraints
179 have occurred, the court must ask the child whether the restraints seemed justified, and whether
180 the child was forced to watch, listen to, or participate in any restraints of other residents.
181 Additionally, the court must attempt to determine whether any restraints used in the child’s
182 presence caused severe injury or infection or interfered with normal breathing. If a child testifies
183 that his current program is abusive or uses excessively violent restraints or restraints that
184 interfere with breathing, the court must ensure that the child is protected from retaliation by
185 program staff, and must note in writing any steps taken to prevent retaliation.”

186 SECTION 22. Section 39G of said chapter 119, as recently amended by chapter 240 of
187 the acts of 2012, is hereby amended by striking the fourth paragraph and inserting the following
188 paragraph:-

189 “No order shall continue in effect after the eighteenth birthday of a young adult named in
190 a request for assistance, however, the court may recommend that such a young adult voluntarily
191 participate in a program designed and operated as a transition to independent living. The court
192 must make provisions for funding the young adult’s participation in such a recommended
193 program.”

194 SECTION 23. Clause (iii) of Section 39H of said chapter 119, as recently amended by
195 chapter 240 of the acts of 2012, is hereby amended by adding to the phrase ending “juveniles
196 adjudicated delinquent are also provided care in such facility” the following text:-

197 “Such a child may not be placed in a secure program if there is evidence that the child’s
198 failure to respond to a summons or likely failure to respond to a summons is due to abuse,
199 illness, or willful obstruction of any adult.”

200 SECTION 24. Section 34, as recently created by chapter 240 of the acts of 2012, are
201 hereby amended by adding the following subclause:-

202 (e) The department shall adopt regulations giving such students the opportunity to
203 graduate early with an equivalency diploma or regular diploma upon meeting competency
204 requirements, which shall include passing the Competency Determination, as defined in section
205 1D of chapter 69 of the MGL and 603 CMR 30. The competency requirements shall be
206 structured such that any student shall have the opportunity to meet them within 30 days of
207 enrollment in a truancy prevention program, regardless of age.

208 SECTION 25. Subclause (a) of section 34, as recently created by chapter 240 of the acts
209 of 2012, are hereby amended by striking out the phrase “1 of whom shall be a private provider of
210 services to families with children who have behavioral health needs” and inserting the
211 following:-

212 “1 who is an adult who has been the subject of a CHINS or Child Requiring Assistance
213 filing within the past 15 years, who is not an employee of the commonwealth or a contractor
214 thereof, is not associated with any private provider of behavioral health services, and is currently
215 either a college student or financially independent,”

216 SECTION 26. Section 10 of chapter 69 of General Laws, as most recently amended by
217 chapter 240 of the acts of 2012, is hereby amended by adding the following sentence to the end
218 of the first paragraph:-

219 “The department shall adopt regulations giving such students the opportunity to graduate
220 early with an equivalency diploma or regular diploma upon meeting competency requirements,
221 which shall include passing the Competency Determination, as defined in section 1D of chapter
222 69 of the MGL and 603 CMR 30. The competency requirements shall be structured such that
223 any student shall have the opportunity to meet them within 30 days of enrollment in a truancy
224 prevention program, regardless of age.”

225 SECTION 27. Section 38, as recently created by chapter 240 of the acts of 2012, is
226 hereby amended by striking existing text following the sentence ending “under section 19 of
227 chapter 321 of the acts of 2008” and inserting the following:-

228 “The program shall attempt to resolve the conflict by offering the child the opportunity to
229 pass the Competency Determination, as defined in MGL §69:1D and 603 CMR 30, regardless of
230 age, and shall make this offer to the child in writing within 3 days of the child enrolling in the
231 program. The child shall not be obliged to accept or decline this offer immediately, however, the
232 program shall provide a testing opportunity within 15 days of the child accepting the offer. A
233 child who earns a Certificate of Mastery on the Competency Determination, as defined in 603
234 CMR 31, shall be awarded a regular high school diploma from his school district and shall be
235 exempt from school attendance requirements. However, the child’s school district shall remain
236 responsible for providing the child with the opportunity to take any standardized test that may be
237 required for admission to college. A child who earns a Certificate of Mastery on the
238 Competency Determination in this way shall be eligible for the same state merit scholarships as a
239 child who completed the twelfth grade.

240 A child who passes the Competency Determination without a Certificate of Mastery shall
241 be offered the opportunity to pass a high school equivalency test within 15 days of passing the
242 Competency Determination. A child who passes the high school equivalency test shall be
243 granted a high school equivalency diploma and be exempt from school attendance requirements.
244 The Department of Education may create its own high school equivalency test, which may be the
245 same as the Competency Determination, or the Department of Education may negotiate with the
246 GED Testing Service to allow such a child under the age of 16 to attempt to earn a GED. If the
247 GED Testing Service will not allow such a child to attempt to earn a GED, or if the GED Testing
248 Service cannot provide GED testing to the child within 15 days of the child passing the
249 Competency Determination, or if the Department of Education and the GED Testing Service
250 cannot reach an agreement for such children within 1 year of the effective date of this act, the
251 Competency Determination shall be considered the high school equivalency test until such time
252 as the Department of Education creates its own high school equivalency test. Such a child who
253 passes the Competency Determination before a high school equivalency test is adopted shall be
254 exempt from school attendance requirements until a high school equivalency test is adopted, but
255 shall not be granted an equivalency diploma before passing a high school equivalency test.

256 A child who fails to pass the Competency Determination may choose to take the test
257 again at a later date, however, the truancy prevention program may delay the retesting for up to
258 120 days.

259 The department shall evaluate the effectiveness of the program in preventing truancy and
260 enhancing the child’s academic performance. The department shall collect statistics on the
261 attempts to pass the Competency Determination under this program, the degree of success of
262 these attempts, and the number of regular diplomas and equivalency diplomas awarded under
263 this program. The department shall report the results of that evaluation to the board of
264 elementary and secondary education, the house and senate committees on ways and means, joint
265 committee on education, the department of elementary and secondary education and the child
266 advocate.”

267 SECTION 28. Section 21, of chapter 119 of the General Laws, is hereby amended to
268 include the following definitions:-

269 “Non-secure program”, a residential program or group home for minors that does
270 not qualify as a Secure program under the definition below, which may be used as temporary
271 shelter or longer placement, or as a substitute for private foster homes only in the absence of
272 available private foster homes, which

273 (1) has the obligation to provide residents with a life that is as normal as possible.

274 (2) grants age-appropriate freedoms to residents as a necessary part of helping them grow
275 into functional, self-sufficient adults who are able to fully integrate into American society.

276 (3) to the maximum reasonable extent, allows residents to attend normal public schools,
277 participate in extracurricular activities, and have friends outside the program.

278 “Secure program”, any residential treatment center, therapeutic boarding school, group
279 home, or overnight camp for minors characterized by security hardware or isolated location, and
280 a staff-to-child ratio sufficient to prevent escape, or any such facility which self-identifies as a
281 secure program, or any such facility where minor residents’ immediate needs are considered
282 more important than the potential harm caused by restrictive institutionalization and isolation
283 from normal society. Additionally, a residential facility for minors may be considered a secure
284 program if it places any of the following restrictions upon residents:

285 (1) residents without a severe intellectual disability are not permitted to attend a normal
286 public school, or attendance at a normal public school is considered privilege which is
287 indefinitely denied to new residents by default, or more than half the residents are prohibited
288 from attending a normal public school under normal circumstances. Non-therapeutic boarding
289 schools are exempt from this clause.

290 (2) residents are prohibited from having private conversations.

291 (3) residents without a severe intellectual disability are prohibited from closing any door
292 at any time, or from being alone in any room other than a bathroom.

293 (4) residents are not given opportunity and sufficient space to exercise for at least half an
294 hour a day or 5 hours a week. For the purpose of this definition, household chores shall not be
295 considered exercise, nor shall exercise time be allotted exclusively during time allotted for
296 sleeping, eating, or visitation, nor shall exercise time replace all free time, nor shall exercise be
297 used as a punishment or means of humiliation.

298 (5) takedown restraints are used to enforce program rules or staff commands even when
299 the resident is not posing a danger to himself or others, or staff has a history of escalating minor
300 infractions in order to justify restraints, or mechanical or chemical restraints are used at any time.

301 (6) residents are completely prohibited from speaking to any friends of similar age
302 outside the program, except by mail, or speaking to any friends of similar age outside the
303 program is a privilege denied to more than half the residents under normal circumstances. A
304 non-secure program may prohibit residents from speaking to specific friends; however, the
305 program should maintain a list of such friends and the reason that the resident is prohibited from
306 speaking to them.

307 (7) invasive personal searches are used on residents at any time.

308 Additionally, a program may be considered a secure program if at least 3 of the following
309 restrictions are applied to residents who have lived at the facility for over a week, who are not
310 being punished for specific infractions, threats to run away, or incomplete responsibilities, and
311 who do not have a severe intellectual disability.

312 (1) residents are prohibited from having shoes, coats, or containers in their possession.

313 (2) residents without special obligations are given less than half an hour a day of free
314 time, or less than 5 hours a week of free time

315 (3) residents age 10 and up are not permitted to leave any room at any time without staff
316 accompaniment.

317 (4) residents age 12 and up are completely prohibited from going outside during free time
318 without staff or a relative present, or going outside without staff or a relative present is a
319 privilege denied to more than half the over-12 residents under normal circumstances.

320 (5) residents age 14 and up are completely prohibited from leaving the property during
321 free time without staff or a relative present, or leaving the property during free time without staff
322 or a relative present is a privilege denied to more than half the over-14 residents under normal
323 circumstances. This shall not be interpreted to mean that a non-secure program cannot limit the
324 amount of free time spent off the property. A non-secure program may prohibit all residents
325 from leaving the property during free time under special temporary circumstances, and may
326 place reasonable restrictions upon time, activities, and places and people visited while off the
327 property, however, a non-secure program may not willfully isolate residents from normal society
328 for long periods of time.

329 (6) residents age 16 and up who are not struggling in school are prohibited from having a
330 job outside the program, or the program is unwilling to make reasonable accommodations for
331 over-16 residents who want to work.

332 SECTION 29. Section 32, of chapter 119 of General Laws, is hereby amended by adding,
333 after the third paragraph, the following:-

334 The department shall not place any child in a secure program for evaluation except under
335 the following conditions:

336 (a) the child has run away from a non-secure, non-abusive placement immediately
337 preceding placement in the secure program, and did not return voluntarily within 12 hours, or
338 engaged in criminal behavior during his absence from the non-secure program. For the purpose
339 of this subsection, returning voluntarily shall include circumstances where the child returns
340 peaceably after being found within 12 hours, or does not resist returning after being told that
341 returning within 12 hours will prevent him from being placed in a secure program.

342 (b) the child has attacked or severely harassed other children in a non-secure placement
343 immediately preceding placement in the secure program

344 (c) the child has attacked staff in a non-secure placement within the past 180 days, under
345 circumstances that do not indicate the child was defending himself from an abusive restraint or
346 escort, or do not indicate the child was evading a restraint or escort without attacking.

347 (c) the child is known to have a current addiction to hard drugs.

348 (d) the child has a severe intellectual or developmental disability which prevents him
349 from having full understanding of his environment. Behavioral health issues are specifically
350 excluded unless such issue leads to condition (a), (b), (c), or (e).

351 (e) the secure program is a psychiatric hospital and the child requires immediate
352 hospitalization to prevent suicide, as determined by a social worker employed by the hospital for
353 suicide risk assessment. No evaluation in a secure program shall continue for more than 15 days.
354 Any placement in a secure program which is not court ordered must meet the same conditions as
355 a placement for evaluation, but may continue for up to 45 days. The department shall not place
356 any child in a secure program or programs for more than 45 consecutive days or more than 120
357 days per year without a court order. If the department believes it necessary to continue detaining
358 the child in a secure program, it must file a petition for the commitment of a dangerous person
359 under the procedures set forth in chapter 123. Upon expiration of a child's placement in a secure
360 program, the department must immediately place the child in a non-secure placement. If it is not
361 possible to find a non-secure placement for the child, the program must make non-secure
362 accommodations for the child, including allowing the child to attend public school. Any child
363 who is placed in a secure program due to a shortage of more appropriate housing must be granted
364 a full range of non-secure accommodations by default, regardless of whether the placement is
365 shorter than 1 week. Any failure by the program to make non-secure accommodations for a
366 child entitled to non-secure accommodations shall be justified in writing to the child's social
367 worker and the office of the child advocate. Under penalty of perjury, staff of secure programs
368 may not make false reports of the child acting violently or attempting to run away in order to
369 subvert this clause. A child who is placed in a secure program for more than 15 days shall have
370 the right to apply for a commitment hearing under the procedures set forth in chapter 123,

371 section 9(b). The secure program in which the child resides shall inform the child and any
372 interested adults of this right in a timely and appropriate manner. The institution may not use
373 unreasonable means to prevent the child from applying for a commitment hearing. For the
374 purpose of this section, the following definitions shall apply:

375 (a) "Interested adults" means legal relatives and such others as may visit the child. An
376 adult applying for a commitment hearing on behalf of a child is not guaranteed custody should
377 the child be released from the program.

378 (b) "Unreasonable means" includes but is not limited to: use of physical restraint, use of
379 prolonged solitary confinement, denial of visitation with relatives, denial of access to materials
380 or communication channels needed for the application, and willful misrepresentation of the
381 process of applying for a commitment hearing. No residential program operated or contracted by
382 the department shall knowingly use restraints which interfere with normal breathing or
383 circulation, regardless of whether breathing is inhibited to the point where the child is completely
384 unable to speak. No residential program operated or contracted by the department shall ask or
385 require any child to write or sign any document giving staff blanket permission to restrain the
386 child at some point in the future. Any legally required report on a restraint generated by the
387 program shall not use any prewritten document as a substitute for a child's comments on a
388 restraint. Any such report must describe any indications that the child was having difficulty
389 breathing, including but not limited to claims by the child that he was having difficulty
390 breathing. The report shall also describe staff response to these indications. Any such report
391 shall indicate whether the child had a medical emergency in the week following the restraint,
392 regardless of whether the medical emergency was an obvious result of the restraint. The report
393 shall also note whether injuries resulting from the restraint were apparent for more than 1 week.
394 The office of health and human services shall have the right to make periodic, unscheduled
395 audits of residential programs operated or contracted by the department for the purpose of
396 uncovering abusive use of restraints. Auditors shall have the right to privately interview child
397 residents without giving prior notice to the program.