

**Just for Youth:
Advocating for Youths in the
Massachusetts
Department of Youth Services**



**The Mental Health Legal Advisors Committee
Third Edition (updated through June 2012)**

**Just for Youth:
Advocating for Youths in the
Massachusetts
Department of Youth Services**

**The Mental Health Legal Advisors Committee
Third Edition (updated through June 2012)**

The Mental Health Legal Advisors Committee (MHLAC) helps children and adults with mental health and other disabilities protect their rights and obtain appropriate services. A state agency of the Supreme Judicial Court, we provide legal advice and representation on issues including: access to services; rights regarding treatment; custody and visitation; insurance; education; discrimination; and rights in institutions and the community. For assistance, call MHLAC's Intake Line at (617) 338-2345 ext. 120 or (800) 342-9092 ext. 120. MHLAC is located at 24 School St., 8th floor, Boston, MA 02108.

MHLAC's DYS Project provides legal advice and representation to youth involved with DYS on issues including: mental health assessment and care; education; appropriate placement; rights in facilities; restraint; disability discrimination; and transition to the community. More information is available at http://www.mhlac.org/DYS_Project.htm. For legal assistance on a matter involving a DYS-involved youth, call the DYS Project at (617) 338-2345 ext. 124 or (800) 342-9092 ext. 124.

This book is updated periodically. For the most updated information, please consult the online version at <http://www.mhlac.org/justforyouth.html>. Additionally, the nine checklists for families (contained here in Appendix C) are also available at http://www.mhlac.org/DYS_Checklists.htm.

Copyright © 2010 by the Mental Health Legal Advisors Committee, Third Edition (Updated though June 2012) All rights reserved. Permission is granted to reproduce this book in print media for non-commercial, non-profit use only if credit is given to MHLAC.

The cover art, entitled "Blue Tears," was created by Lacey, a participant in H.U.M.A.N. (Hear Us Make Artistic Noise), a visual arts program for girls in the juvenile justice system. H.U.M.A.N., originally an initiative of the Juvenile Rights Advocacy Project at Boston College Law School, is now called Artistic Noise. More information is available at <http://www.artisticnoise.org/>.

This book contains research supported by the Corporation for National and Community Service under an AmeriCorps Grant. Opinions or points of view expressed in this document are those of the authors and do not necessarily reflect the official position of, or a position that is endorsed by, the Corporation or the AmeriCorps Program.

This project was supported by Grant No. 2009-JF-FX-0041 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

PREFACE

This book is for parents, legal guardians (including the Department of Children and Families) and other caregivers of youth in the custody of the Massachusetts Department of Youth Services (DYS) or at risk of entering DHS custody. In addition, we hope that this book can be useful to youth in DHS custody themselves. While the book is written for lay people, it also should be helpful to professionals working in this area including advocates, providers, and administrators.

This book describes the basic steps that a youth typically follows within the DHS system, from the point of arrest until discharge from DHS. The book is focused particularly on the rights of a youth involved with DHS. The book explores two areas closely: 1) mental health/substance abuse services; and 2) education.

This book uses the pronoun “he” for simplicity. However, a growing proportion of youth involved with DHS are girls. This book is for both boys and girls involved with DHS.

Appendix C of this book is a set of checklists for actions that a youth and his family can take at various stages of the youth’s involvement with DHS. The checklists duplicate (but simplify) the information contained in certain of the book’s chapters.

While this book outlines a youth’s rights when involved with DHS, it is not a substitute for legal advice or representation. Seek the help of a lawyer or outside advocate when questions regarding rights arise. Legal and advocacy resources are listed in the Resource Guide at the end of this book.

The Mental Health Legal Advisors Committee greatly appreciates the work of the many individuals who helped us create this book. Their contributions are described in the “Acknowledgements” at the end of this book.

Since the beginning of this publication, Jennifer Honig of the Mental Health Legal Advisors Committee has served as coordinator and editor-in-chief. Her writing and editorial contributions made this publication possible.

If you notice incorrect information in this book, or if you think that there is some information that should be included, please contact Jennifer Honig at jhonig@mhlac.org or (617) 338-2345 ext. 125.

Frank Laski
Executive Director
Mental Health Legal Advisors Committee

CHAPTERS

CHAPTER 1: USING THIS BOOK TO ADVOCATE FOR YOUTHS INVOLVED WITH DYS

CHAPTER 2: IMPORTANT TERMS USED IN THIS BOOK

CHAPTER 3: HOW YOUTHS BECOME INVOLVED WITH THE JUVENILE JUSTICE SYSTEM

CHAPTER 4: PREVENTION

CHAPTER 5: AFTER THE ARREST

CHAPTER 6: TRIAL, ADJUDICATION, AND DISPOSITION

CHAPTER 7: COMMITMENT AND ASSESSMENT

CHAPTER 8: CLASSIFICATION

CHAPTER 9: PLACEMENT

CHAPTER 10: OVERVIEW OF RIGHTS DURING CONFINEMENT

CHAPTER 11: THE SITUATION FOR GIRLS

CHAPTER 12: MEDICAL SERVICES DURING CONFINEMENT

CHAPTER 13: MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES DURING CONFINEMENT

**CHAPTER 14: EDUCATION SERVICES DURING
CONFINEMENT**

**CHAPTER 15: SPECIAL EDUCATION SERVICES DURING
CONFINEMENT**

CHAPTER 16: TRANSITION BACK TO THE COMMUNITY

**CHAPTER 17: GRANT OF CONDITIONAL LIBERTY AND
REVOCAION**

**CHAPTER 18: HEALTH INSURANCE AND OTHER HEALTH
CARE FUNDING SOURCES IN THE COMMUNITY**

**CHAPTER 19: MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES IN THE COMMUNITY**

CHAPTER 20: EDUCATION IN THE COMMUNITY

CHAPTER 21: SUPERVISION IN THE COMMUNITY

CHAPTER 22: DISCHARGE FROM DYS

CHAPTER 23: RESOURCE GUIDE

**APPENDIX A: TABLE OF SELECTED LEGAL PROVISIONS
DISCUSSED IN THIS BOOK**

**APPENDIX B: COMPARISON OF DYS RESTRAINT POLICY
AND DEEC RESTRAINT REGULATIONS**

APPENDIX C: CHECKLISTS FOR FAMILIES

TABLE OF CONTENTS

CHAPTER 1: USING THIS BOOK TO ADVOCATE FOR YOUTHS INVOLVED WITH DYS

Overview of DYS.....	1.2
Advocating for your child.....	1.2
Legal authority cited in this book.....	1.3

CHAPTER 2: IMPORTANT TERMS USED IN THIS BOOK

CHAPTER 3: HOW YOUTHS BECOME INVOLVED WITH THE JUVENILE JUSTICE SYSTEM

Personal risk factors.....	3.2
Mental health problems.....	3.2
Education-related disabilities.....	3.3
Drug or alcohol abuse.....	3.3
Environmental risk factors.....	3.3
Surroundings.....	3.3
Experiencing violence.....	3.4
Family instability.....	3.4
Department of Children and Families.....	3.4
Warning signs.....	3.5
School failure.....	3.5
Weapons.....	3.5
Drug dealing.....	3.5

How youth typically come to DYS through the court system.....3.6

Probation surrender.....3.6

Child in Need of Services3.6

Racism, discrimination, and stigma3.7

Disproportionate Minority Contact3.7

Discrimination and stigma experienced by lesbian, gay, bisexual, transgender, or queer youth.....3.9

CHAPTER 4: PREVENTION

Evaluating a youth’s needs4.2

Finding resources4.2

CHAPTER 5: AFTER THE ARREST

Role of the police officer.....5.3

Role of the probation officer and bail commissioner while the youth is held at the police station or in pre-arraignment detention5.3

Pre-arraignment detention in an Alternative Lockup Program .5.4

Conditions for youths in pre-arraignment detention facilities..5.5

Continuing a youth’s medication during confinement at the police station or in a pre-arraignment detention facility5.6

Appearing in court for the arraignment and bail hearing5.7

Role of the probation officer on the day of arraignment5.8

The youth’s lawyer5.9

The arraignment hearing5.10

The bail hearing5.10

Post-arraignment detention.....5.11

Juvenile Detention Alternative Initiative5.13

Placing a youth in DCF care or custody in post-arraignment detention5.13

Diversion5.14

Preparation for trial5.16

Predisposition mental health reviews5.16

Juvenile court clinic evaluation5.16

Independent clinical evaluation5.17

Reasons for evaluations5.18

Before pursuing an evaluation5.18

CHAPTER 6: TRIAL, ADJUDICATION, AND DISPOSITION

Where the case will be heard6.2

Youthful offender cases6.2

Trial6.2

Determination that a youth is delinquent or a youthful offender6.3

Tendering a plea6.3

Sentencing/disposition6.4

The lawyer’s role during the sentencing/ disposition phase6.4

Pursuing services for youths with mental health or substance abuse treatment needs.....6.5

Pursuing community-based services for youth with mental health treatment needs6.5

Juvenile record6.6

Probation.....6.7

Probation surrender6.8

Table of potential dispositions.....6.9

CHAPTER 7: COMMITMENT AND ASSESSMENT

Commitment to DYS7.2
Placement upon commitment7.2
Assessments of committed youth7.3
Intake screening7.3
Medical evaluation.....7.3
Full assessment.....7.4
Providing records to DYS7.6

CHAPTER 8: CLASSIFICATION

Referral for classification8.2
Notice of the staffing8.2
The staffing8.3
Service delivery plan.....8.5
Classification grid8.7
Classification8.8
Factors to be considered in classification.....8.9
Issuing a decision and other documents.....8.10
Appeal of decision.....8.11

CHAPTER 9: PLACEMENT

Types of DYS facilities and programs9.2
Hardware secure treatment facilities9.2
Detention units9.3
Assessment units9.3
Committed units.....9.4
Revocation units.....9.4
Staff secure treatment facilities and programs9.4
Other placement options9.4
Selecting a DYS facility or program.....9.5
Pursuing community-based settings9.6

- Pursuing specialized placements9.7**
- Transition from placement to placement9.7**
- Treatment review meetings9.8**
- Extension of time assignment.....9.9**
- Levels of supervision in confinement9.10**
- Dual status youths9.12**

CHAPTER 10: OVERVIEW OF RIGHTS DURING CONFINEMENT

- U.S. Constitutional rights 10.5**
- DYS regulations and policies 10.5**
- Accessing DHS records..... 10.6
- Treatment plans..... 10.8
- Treatment team meetings..... 10.9
- Room confinement 10.10
- Restraint according to DHS restraint policy 10.13
- Restraint in state-run DHS programs according to DHS restraint policy 10.13*
- Restraint in any DHS or vendor-run program according to DHS restraint policy 10.15*
- Restraint in DHS run or contracted facilities according to DHS regulation..... 10.16
- Mechanical restraint during transport according to DHS’ transportation policy 10.17
- Searches during transport 10.18
- Visits 10.18
- Telephone 10.21
- Postal mail 10.22
- Special management 10.23
- Program Advocate 10.24

Passes to the community 10.25
 Behavior modification 10.26
 Staff interaction with youth 10.27
 Language..... 10.28
 Religious services..... 10.28
 Searches in facilities and programs..... 10.29
Searches with metal detectors 10.30
Pat searches..... 10.31
Strip and undergarment searches 10.31
Body cavity searches..... 10.32
Room searches 10.33
Searches of common areas..... 10.33
Unit shakedowns 10.34
 Personal property 10.34
 Complaint process..... 10.34
 Incident reporting 10.35
Department of Early Education and Care (DEEC)
regulations 10.37
 Case management and service planning 10.37
 Complaint process..... 10.38
 Incident reporting 10.38
 Behavior management 10.38
 Restraint 10.39
 Time out..... 10.40
 Corporal punishment 10.41
 Visits 10.41
 Telephone 10.42
 Postal mail 10.43
 Grooming and hygiene 10.44
 Clothing 10.44
 Searches 10.45

Religious practice 10.45

Recreation 10.45

Mental health treatment..... 10.45

Medical care 10.46

The administration of medication..... 10.47

Department of Mental Health (DMH)
statutes, regulations, and other
provisions 10.48

Mental health admission and commitment 10.48

Visits 10.50

Telephone 10.50

Postal mail 10.51

Access to outside advocates 10.51

Privacy..... 10.51

CHAPTER 11: THE SITUATION FOR GIRLS

Girls in DYS..... 11.2

Medical issues 11.3

Pregnancy 11.3

Mental health services 11.3

Girls transitioning back to the community 11.4

Resources for girls and advocates 11.5

CHAPTER 12: MEDICAL SERVICES DURING CONFINEMENT

Right to medical services 12.3

Intake and medical evaluation of youths detained in DYS
facilities 12.4

Intake screening 12.4

Medical evaluation..... 12.4

Intake, medical evaluation, and full assessment of committed youths..... 12.5

Intake screening 12.5

Medical evaluation..... 12.5

Full assessment..... 12.5

Annual examinations of committed youths..... 12.7

Further rights of detained or committed youths to screening upon placement in program 12.7

Right to consent to and refuse medical, mental health and substance abuse treatment for youths in general 12.8

Right to consent to and refuse treatment for DYS involved youths..... 12.8

Reporting medical information to parents or legal guardians 12.10

How DYS delivers health services in secure programs..... 12.10

Access to medical specialists and promoting continuity of care..... 12.11

Medication..... 12.11

Isolation for medical reason..... 12.12

Health care insurance programs..... 12.12

Medicaid 12.13

Medicaid generally..... 12.13

Entering DYS custody 12.13

When DYS provides services itself versus when DYS relies on MassHealth services 12.14

No federal Medicaid funds for inmates of public institutions 12.15

Choosing a health plan once enrolled in Medicaid (MassHealth) 12.15

Private health insurance 12.17

Other state agency health care services..... 12.17

CHAPTER 13: MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES DURING CONFINEMENT

DYS identification of mental health problems 13.2

DYS identification of alcohol or substance abuse problems 13.4

Monitoring of youth identified as posing a risk of self-harm or suicide..... 13.5

DYS follow-up clinical evaluation 13.7

Traditional DYS counseling services..... 13.8

Mental health services 13.8

Substance abuse services..... 13.9

Effective mental health treatment 13.10

Right to receive and refuse medication 13.11

Additional provisions regarding psychotropic medication for youths in DYS facilities..... 13.14

Committed youths..... 13.14

Detained youth 13.14

Administering medication 13.14

Department of Mental Health services 13.15

Residential educational placement..... 13.16

Substance abuse testing 13.17

CHAPTER 14: EDUCATION SERVICES DURING CONFINEMENT

The effect of juvenile justice system involvement on education 14.2

DYS’ education provider 14.2

Which youths receive educational services in DYS facilities	14.3
Initial assessment.....	14.3
Movement through DYS.....	14.4
The right to quality education	14.5
Curriculum	14.6
Ongoing assessment of students	14.7
Teacher certification.....	14.8
Student-teacher ratio	14.8
Learning time.....	14.8
English language learners.....	14.9
Special education services	14.9
Education Liaisons	14.10
Vocational education	14.11
Pursuing a Massachusetts State High School Equivalency Diploma (GED)	14.12
Pursuing post-secondary education	14.13

CHAPTER 15: SPECIAL EDUCATION SERVICES DURING CONFINEMENT

State and federal law requirements for special education	15.2
Free appropriate public education.....	15.2
The evaluation process	15.3
The team meeting to determine eligibility for special education services	15.4
An Individualized Education Program.....	15.4
A 504 plan.....	15.7

The role of Special Education in Institutional Settings (SEIS) in providing special education to youths in DYS custody 15.7

The role of the youth’s local school district in providing special education to youths in DYS custody..... 15.8

Additional responsibilities of DYS and SEIS for youths with special education needs 15.9

Special education residential schools 15.13

CHAPTER 16: TRANSITION BACK TO THE COMMUNITY

Ninety-day re-entry planning 16.2

Short term track 16.2

Longer term track 16.4

Developing the service delivery and relapse prevention plans 16.5

Service delivery plan 16.5

Relapse prevention plan..... 16.7

Step down programs..... 16.8

Continuity of medical care..... 16.8

Detained youths..... 16.8

Committed youths..... 16.8

Continuity of a youth’s mental health and substance abuse care..... 16.9

Mental health care 16.9

Substance abuse care 16.11

Re-entry program for youths with serious and violent offenses 16.13

**CHAPTER 17: GRANT OF CONDITIONAL LIBERTY AND
REVOCAION**

Agreeing to a grant of conditional liberty 17.2
Contents of a grant..... 17.2
Modification of the grant..... 17.4
Allegations of a violation of a grant of conditional liberty 17.4
Notice of hearing to revoke a grant of conditional liberty..... 17.7
The revocation hearing process 17.9
Findings of the Hearing Officer 17.11
Appeal of decision of the Hearing Officer..... 17.13
Commissioner’s Privilege..... 17.14
Confinement after a revocation hearing..... 17.15

**CHAPTER 18: HEALTH INSURANCE AND OTHER HEALTH
CARE FUNDING SOURCES IN THE COMMUNITY**

Public health insurance programs 18.2
Through age 18 18.2
MassHealth generally..... 18.2
*Choosing a health plan once a youth is
enrolled in MassHealth*..... 18.3
Youths returning to the community..... 18.3
After age 18 18.6
Private health insurance programs 18.6
Commonwealth Health Insurance
Connector Authority..... 18.8
Accessing free care..... 18.9

CHAPTER 19: MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES IN THE COMMUNITY

Accessing mental health services 19.2

Accessing emergency services and crisis evaluation 19.3

Accessing *Rosie D.* services..... 19.3

Accessing services from the Department of Mental Health..... 19.7

Clinical eligibility 19.8

Adult applicants 19.8

Child and adolescent applicants 19.8

Determination of need for Department of Mental Health services 19.9

Available services 19.10

Juvenile Forensic Transition Initiative 19.10

Accessing substance abuse services 19.11

DYS services 19.11

Bureau of Substance Abuse Services 19.12

Substance abuse testing 19.14

CHAPTER 20: EDUCATION IN THE COMMUNITY

Types of education a youth may access 20.2

Academic credit transfer 20.3

Public school refusal to enroll a student 20.4

Suspension from public school 20.4

Expulsion from public school 20.6

Protections for students with disabilities from suspension and expulsion 20.9

Transition schools..... 20.12

Special rights for youths receiving special education services 20.15

IEP’s transition plan20.15
 “Stay put” right20.16
 Alternative education20.16

CHAPTER 21: SUPERVISION IN THE COMMUNITY

Caseworker supervision and support21.2
 DYS levels of supervision21.3
 Intermediate Sanctions model21.5
 DYS monitoring of adherence to the grant
 of conditional liberty21.6

CHAPTER 22: DISCHARGE FROM DYS

Discharge22.2
 Discretionary discharge22.2
 Extension of commitment.....22.4
 Assent of Ward22.4
 Risk of recidivism.....22.5

CHAPTER 23: RESOURCE GUIDE

Department of Youth Services23.2
 Other Massachusetts state agencies23.3
 Legal representation23.6
 Mental and physical health services23.10
 Advocacy and support organizations23.12
 General resources23.15
 Education resources23.15
 Employment resources.....23.17
 Housing resources23.19

Crime and violence prevention23.22

Mentoring organizations.....23.23

Civic engagement.....23.23

Sexuality resources.....23.25

Spiritual engagement23.26

Web-based resource lists23.26

Publications23.27

General issues.....23.27

Criminal law23.28

Education.....23.28

Special education23.29

Housing23.30

Insurance.....23.31

Mental health services.....23.31

Federal and state laws and regulations23.32

**APPENDIX A: TABLE OF SELECTED LEGAL PROVISIONS
DISCUSSED IN THIS BOOK**

**APPENDIX B: COMPARISON OF DYS RESTRAINT POLICY
AND DEEC REGULATIONS**

APPENDIX C: CHECKLISTS FOR FAMILIES

CHECKLIST OF STEPS TO TAKE AFTER THE ARREST C.2

**CHECKLIST OF STEPS TO TAKE DURING TRIAL,
ADJUDICATION, AND DISPOSITION..... C.4**

**CHECKLIST OF STEPS TO TAKE UPON COMMITMENT AND
DURING ASSESSMENT..... C.7**

CHECKLIST OF STEPS TO TAKE REGARDING THE STAFFING AND CLASSIFICATION MEETINGS C.10

CHECKLIST OF STEPS TO TAKE BEFORE TRANSITIONING BACK TO THE COMMUNITY C.12

CHECKLIST OF STEPS TO TAKE BEFORE SIGNING A GRANT OF CONDITIONAL LIBERTY C.15

CHECKLIST OF STEPS TO TAKE IN RESPONSE TO A POTENTIAL REVOCATION OF A GRANT OF CONDITIONAL LIBERTY C.16

CHAPTER 1:

USING THIS BOOK TO ADVOCATE FOR YOUTHS INVOLVED WITH DYS

Overview of DYS.....	1.2
Advocating for your child.....	1.2
Legal authority cited in this book.....	1.3

USING THIS BOOK TO ADVOCATE FOR YOUTHS INVOLVED WITH DYS

Overview of DYS

The Department of Youth Services (DYS), the Massachusetts state juvenile justice agency, serves many youth each year. Each year, 18,000 - 20,000 youth are arraigned in Massachusetts courts. Some of these youth will become involved with DYS. A youth may be detained by the Juvenile Court. In that case, if the youth cannot make court-ordered bail (or in some cases if the youth is held without bail), the youth is physically held at DYS. A youth also may be committed by the Juvenile Court to undergo treatment and supervision by DYS.

In 2006, DYS had 4817 new detention admissions and 906 new commitment admissions.¹ And, as of January 1, 2007, DYS was responsible for providing custody and/or supervision to a total of 2091 committed youth.²

Approximately half of the youth committed to DYS reside in DYS run or contracted facilities, while the other half of DYS committed youth reside in the community.³


Most youth held by DYS are between the ages of 14 and 17, although they are sometimes as young as 11 or up to the youth's 21st birthday.

Advocating for your child


When a parent, legal guardian or other caregiver receives a phone call from his or her child or child in his or her care, and learns that he has been arrested, the family may soon become involved with DYS. Caregivers of a child involved with the juvenile justice system may feel hopeless, depressed, outraged, guilty, frightened, disappointed, or embarrassed.

-
- 1 Executive Office of Health and Human Services, Annual Population Analysis – Detention Admissions: Analysis of DYS detentions from 1997 to 2006, Figure 1, <http://www.mass.gov/eohhs>; Executive Office of Health and Human Services, Annual Population Analysis – New Commitments, New Commitments to DYS, Figure 3, <http://www.mass.gov/eohhs>. The average daily number of youth held in pre-trial detention in 2006 was 296. Executive Office of Health and Human Services, Annual Population Analysis – Detention Admissions, <http://www.mass.gov/eohhs>.
 - 2 Executive Office of Health and Human Services, Annual Population Analysis - Committed Caseload: 2007 analysis of Department of Youth Services committed caseloads from 1997 to 2007, Figure 4, <http://www.mass.gov/eohhs>.
 - 3 Lisa E. Brooks et al., Prisoner Re-entry in Massachusetts, Urban Institute (March 2005) at 30, http://www.urban.org/UploadedPDF/411167_Prisoner_Reentry_MA.pdf

However, it is important for parents, legal guardians, and other caregivers to remember that a DYS involved youth needs support during this time. These parties can ensure the youth's emotional well-being, serve as the youth's advocate, and be a part of the youth's treatment. To provide this support, it is important to know the youth's rights. Even if a youth committed a crime, he still has rights.

 **Tip for families:** In order to be an effective advocate for your child, follow these basic steps.

- Keep all documents related to your child in one place.
- When you talk with officials, caregivers or staff, ask for and write down the person's name, position, and phone number.
- Write down all calls you make and keep copies of all letters you write on behalf of your child.
- Do not take notes of conversations you have with your child regarding the current incident that led to involvement in the juvenile justice system.

 **Tip for Families:** Be polite, but vigorous in your advocacy. You won't win every argument, but if you are polite, reasonable, well informed, and persistent, you will be an effective member of your child's treatment team at DYS.

Legal authority cited in this book

This book contains footnotes which provide the source of the information stated in the text. Whenever possible, we have tried to include legal authority for statements made.

Legal authority may include constitutions, statutes, regulations and case law, as well as rules, guidelines and policies. These sources of authority may be state or federal.

A constitution is the fundamental law of a nation or state. A constitution establishes the basic principles under which the society operates and the government runs, and the limits on state power. Both the United States and Massachusetts have written constitutions.

Statutes are the laws passed by a state legislature or by the U.S. Congress.

- Most Massachusetts statutes are codified in the various chapters

and sections of the Massachusetts General Laws. These statutes are cited in this book as Mass. Gen. L. ch. [chapter number], § [section number]. An unofficial version of these statutes can be found online at <http://www.mass.gov/legis/laws/mgl/>.

- Nearly all federal statutes are published in the United States Code and are cited in this book in the form [chapter number] USC [section]. These statutes can be found online at <http://www.gpoaccess.gov/uscode/index.html>.

Regulations are rules written by agencies. They tend to be more detailed than statutes.

- Massachusetts state regulations are known as the Code of Massachusetts Regulations and are cited in this book as [chapter] CMR [section]. Most state agency regulations can be found online at <http://www.lawlib.state.ma.us/source/mass/cmr/index.html>. Unfortunately, most of DYS's regulations are not available on this webpage. However, they may be requested from DYS. They also may be obtained from the state trial court law library system at <http://www.lawlib.state.ma.us/libraries/services/docdelivery.html> or 1-800-445-8989.
- Federal regulations are generally referred to as the Code of Federal Regulations and are cited in this book as [chapter] CFR [section]. Federal agency regulations can be found online at <http://www.gpoaccess.gov/cfr/index.html>.

Case law is composed of written appellate judicial decisions interpreting laws and regulations and determining whether trial court decisions should be upheld or reversed.

- In Massachusetts, the highest court is the Supreme Judicial Court (SJC) and cases from that court are recorded, by case name, in numbered volumes. The standard form for an SJC case is *John Doe v. Mary Smith*, [volume number] Mass. [starting page number] [year of decision]. Massachusetts also has a lower appellate court, the Massachusetts Appeals Court. The standard form for a Massachusetts Appeals Court case is *John Doe v. Mary Smith*, [volume number] Mass. App. Ct. [starting page number] [year of decision].

Agency policies are, like regulations, rules written by agencies to set out practical procedures. Agencies write policies to explain how to

implement laws and regulations. Agency guidelines are similar instructive statements to describe how agency activity is to be carried out.

- Massachusetts DYS has many policies that describe, among other topics, how agency staff must act in certain situations and the rights of DYS-involved youth. DYS policies are available at <http://www.mass.gov/dys>.
- Massachusetts DYS has a DYS Case Management Practice and Procedural Manual, dated June 2010. It is available from DYS.
- Massachusetts DYS has a DYS Revocation Manual dated June 2003. It is available from DYS.

Statutes, regulations, and case law are all legal binding authority which the courts follow when deciding cases. Agency policies and guidelines should be followed by agencies, but do not have the force of the legally binding forms of authority.

DYS describes many of its regulations as outdated and intends to revise them. In general DYS policies are newer, although DYS is also regularly developing new policies and revising old ones. This book details existing law and policy. You may want to confirm that the provision cited is still in effect before relying on the information contained here.

Particularly relevant statutes and regulations are listed in the Resource Guide at the end of this book.

In addition, commonly used terms in this book are listed and explained in the next chapter, which is entitled “Important Terms Used in This Book.”

CHAPTER 2:

IMPORTANT TERMS USED IN THIS BOOK

It may be helpful for individuals who are new to the DYS system to review the following important terms and explanations prior to reading the remainder of this book.

Alternative Lockup Program (ALP)

A free-standing facility where a youth may be held during pre-arraignment detention; that is, after arrest and until arraignment. There are both non-secure and hardware secure ALPs. DYS does not run any ALPs. The non-secure ALPs are overseen by the Massachusetts Department of Children and Families (DCF, formerly DSS) which then contracts with service providers to operate the programs. The hardware secure facilities are administered by the Massachusetts Executive Office of Public Safety and Security (EOPSS) which, in turn, contracts with other service providers to run the programs. The conditions in these various programs vary; advocates have been particularly critical of the lack of legal standards for EOPSS-administered ALPs.

Arraignment

The court proceeding during which a youth is read the allegations against him, counsel is appointed if the family is indigent (see entry below), a plea is entered, and bail is set or the child is released with or without conditions.

Assessment unit

The type of DYS secure treatment unit where a youth goes when a bed becomes available upon being committed to DYS to await caseworker assignment, the staffing meeting, and placement. Youth receive an assessment on this unit, which includes review and compilation of family involvement, educational history, prior juvenile record, presence or absence of substance abuse, medical and psychiatric history, and review of risk factors related to offending. This

assessment should be completed in 30 to 45 days of placement within the Assessment Unit. The assessment is then used to develop an individual treatment and service plan and to determine future DYS placements.

Bail

An amount of money that a youth or someone acting for him agrees to deposit with the court to ensure that, if he returns home, he will reappear in court for trial and pre-trial proceedings. If a youth or adult on his behalf deposits funds and then appears at every court date, the money will be refunded.

Care and Protection (C & P) proceeding

A proceeding resulting from a petition filed in juvenile court regarding a child under age 18, alleging that the child is without necessary and proper physical or educational care or discipline, or the child is growing up under conditions damaging to the child's character development, or the child is lacking proper attention of a parent or legal guardian, or the child's parent or legal guardian is unwilling, incompetent, or unavailable to provide such care, discipline or attention. After a hearing (in which the parent or legal guardian has the right to a lawyer), a successful petition may result in the parent or legal guardian's loss of physical and legal custody of the child, the transfer of those custodial rights to the Department of Children and Families, or any other disposition that is in the child's best interests.

Caseworker

The DYS staff person responsible for the case management and community supervision of assigned DYS committed youth. As a youth moves through the DYS system and back into the community, his caseworker stays with him. As the youth transitions, his caseworker should notify the youth's parents or legal guardian of his moves. DYS assigns a caseworker within three days of commitment.

Caseworkers are responsible for overseeing the preparation of case histories, participating in the staffing and classification process, developing individualized treatment plans, scheduling and

conducting periodic case conferences, making appropriate referrals to residential and non-residential programs, assessing readiness for release, monitoring client progress in programs and in the community, and serving as the primary DYS resource for youths and their families.

DYS caseworker assignment is based on the community where a youth lives. Caseworkers work out of DYS District Offices and DYS Satellite Offices (formerly Community Re-entry Centers and Neighborhood Centers). Each caseworker is supervised by a District Manager, who is located in a DYS District Office.

Child in Need of Services (CHINS)

A Juvenile Court procedure for youth who are running away, failing to abide by house rules, not attending school, or breaking school rules. Under this procedure, the youth can be placed under the supervision of the probation department. Some youth with CHINS cases are placed in the care and custody of the Department of Children and Families. In these instances, parents lose physical and legal custody of their child.

Children's Behavioral Health Initiative (CBHI)

A state Executive Office of Health and Human Services interagency initiative whose mission is to strengthen, expand and integrate state children's mental health services into a comprehensive, community-based system of care. The goal of CBHI is to ensure that families and their children with significant behavioral, emotional and mental health needs obtain the services necessary for success in home, school and community.

While CBHI has a broader agenda, the first phase of their agenda is to implement the Court's order in the *Rosie D.* federal lawsuit, which will provide mental health services to children enrolled in MassHealth (the Commonwealth's managed Medicaid Program).

Classification

The process by which DYS determines both the range of time which a youth, once sentenced to commitment to DYS, will spend in secure and residential treatment facilities and where. DYS uses a classification grid, defined below, in determining the time recommendation. DYS administrators, known as a Regional Review Team, make the classification decision at a meeting. In doing so, the Regional Review Team considers the recommendation from the staffing meeting.

Classification grid

A tool DYS uses to determine the length of time a youth will remain in secure treatment facilities and in residential treatment facilities, based on the nature of the offense and other factors (see Staffing below). The grid outlines the minimum and maximum treatment times for every offense. DYS uses the youth's most serious offense when looking to the grid for placement duration. The youth typically will have to do at least the minimum amount of treatment time, and may have to do longer. "Treatment time" does not include time spent in detention or assessment. The DYS classification grid is only a guide for deciding placement duration in a secure treatment facility. There is no legal requirement that its recommendations be imposed.

Clinician

When used in the DYS context, the term is a designation for a job position within DYS. DYS has sought funding to employ licensed mental health clinicians.

Commitment

The status of a juvenile delinquent or youthful offender sentenced by the Juvenile Court to the physical custody or supervision of DYS until age 18 or 21. Parents or legal guardians always maintain legal custody. Committed youth live in secure, residential or community placements.

Committee for Public Counsel Services (CPCS)

The state public defender agency which is responsible for overseeing private attorneys (known as “bar advocates”) who accept court appointments to represent indigent youth within the juvenile justice system. In limited circumstances, lawyers working at CPCS will take these cases. Questions regarding representation may be directed to the Youth Advocacy Department at (617) 445-5640 or Helen Fremont at (617) 482-6212.

Community Clinical Coordinator (CCC)

A staff person employed by a provider agency that contracts with DYS. The primary role of the CCC is to assist DYS casework staff in accessing and maintaining the delivery of behavioral health services identified in a youth’s service delivery and relapse prevention plans. The CCC performs this role by working with service providers, state agency, and DYS staff. The CCC assists in transition planning and helps access community based services. To do so, the CCC is knowledgeable about the Massachusetts Behavioral Health Partnership’s managed care entities/providers and about Children’s Behavioral Health Initiative services in the region. Each DYS region has one CCC. The CCC receives clinical guidance from the region’s DYS Regional Clinical Coordinator to ensure clinical continuity and adherence to the service delivery plan as the youth moves from residential to community placement.

Community Service Agency (CSA)

Local agencies created as a result of the *Rosie D.* lawsuit that provide wrap-around behavioral health services to MassHealth recipients up to age 21 with behavioral health needs. Massachusetts has 32 CSAs. Each CSA is responsible for the cities and towns that match Department of Children and Families Area Office boundaries. Three statewide CSAs serve specific special linguistic and cultural communities (African-American, Latino, Deaf

and Hard of Hearing). Each CSA will conduct comprehensive, home-based assessments, provide intensive care coordination, oversee care planning teams (CPTs), identify services, and, in many cases, provide certain home-based services. CSAs are providers in the MassHealth network and contract with the 5 managed care organizations to serve Medicaid eligible children in its geographic area. CSAs became operational in mid-2009.

Community Services Network

The DYS and DYS contracted staff that serve DYS involved youths released from DYS custody. These staff include Caseworkers, District Managers, Assistant District Managers, Resource Specialists, Site Support Specialists and Clerical Support, all based at DYS District or Satellite Offices. These staff also include regionally-based staff including Directors of Community Services, Provider Contract Managers, Community Clinical Coordinators, Family Intervention Specialists, Educational Liaisons, Apprehension Officers and Substance Abuse Specialists. Certain of these staff (District Manager, Caseworkers, Community Clinical Coordinator, Family Intervention Specialist, Resource Specialist, Site Support Specialist, Education Liaison and Substance Abuse Specialist) comprise a youth's community case management team.

Custody

Control over a child. A parent, guardian or state agency may have physical custody, legal custody, or both. DYS may or may not have physical custody of a youth during commitment. In either case, the parent or legal guardian (for example, the Department of Children and Families) retains legal custody.

Delinquent child

A child, older than age 6 and younger than age 17, who is found to have violated any city ordinance or town by-law or who commits any offense against a Massachusetts law. Seventeen year olds are

considered adults in Massachusetts and are tried in adult court.

Detention

There are two types of detention: pre-arraignment and post-arraignment.

Pre-arraignment detention is the legal status of a youth who has been arrested and is being held until the court is open for an arraignment. Youth subject to pre-arraignment detention cannot be held more than six hours in a police station, so they are sent to pre-arraignment detention facilities known as ALPs or, in Boston, overnight arrest facilities. DYS is not responsible for pre-arraignment detention facilities.

Post-arraignment detention is the legal status of a youth who has been arraigned (charged) in juvenile court and who cannot make the set bail. The youth will remain in post-arraignment detention in a DYS-operated detention facility until he makes bail or until his trial and case disposition.

Department of Early Education and Care (DEEC)

The state agency responsible for licensing and monitoring residential care facilities serving children and adolescents.

Department of Mental Health (DMH)

The state agency responsible for providing clinical, rehabilitative and supportive services to adults with serious mental illness and children and adolescents with serious mental illness or serious emotional disturbance.

Department of Elementary and Secondary Education (DESE)

The state agency responsible for overseeing the state public education system. A division of DESE, Special Education in Institutional Settings (SEIS), provides special education services to youth with disabilities residing in state facilities. DESE does not provide regular education services in DYS facilities; DYS

does. DESE used to be called the Department of Education (DOE).

Department of Children and Families (DCF)

The state agency (formerly the Department of Social Services) responsible for protecting minors who may have been abused or neglected by their parents or guardians. Families can become involved in DCF in three ways:

- formal allegations of child abuse or neglect;
- court-ordered DCF involvement; or
- voluntary request for services.

In some cases, DCF may obtain legal custody of the minor. Such custody may result from a Child in Need of Services (CHINS) Petition, a Care and Protection (C&P) petition, or through guardianship of a minor in probate court. In such cases, DCF acts in the place of the parent, as legal guardian, performing the decision-making function that the parent would ordinarily do. Often DYS committed youth have court-ordered involvement with DCF as a result of a CHINS petition or a C&P order.

Department of Youth Services (DYS)

The state juvenile justice agency. DYS is divided into five regions (Metro, Central, Northeast, Southeast, and Western) which provide a continuum of services for boys and girls, including committed and detained youth sent to DYS from the Juvenile Courts.

Disposition

The sentence imposed in a delinquency or youthful offender case by the Juvenile Court.

District Manager

A DYS staff person who supervises DYS caseworkers and is responsible for the daily operations of a DYS District/Satellite Office. The district manager is responsible for the oversight of service delivery for

all committed youth from an assigned geographic location from commitment through discharge. The district manager also approves revocations of grants of conditional liberty.

District Office

Community-based centers that serve DYS-involved youth who live in the community (residing with a parent, guardian, or foster parent or residing in an independent living program). District Offices are run by DYS and vendors in partnership. The primary purpose of District Offices is to provide youth with the intensive supervision and services in order to function and remain in the community. District Offices do not provide most services directly in-house, but connect youth to services in their communities. This is a shift from DYS' prior community service model, the Community Re-entry Centers, which provided a number of services on site.

District Offices are led by District Managers. District and Satellite Offices also house DYS caseworkers who function as case managers, supervising youth and arranging for the provision of services.

There are 20 DYS District Offices across the state. In some of the 5 DYS regions, DYS also has Satellite Offices which serve the same function as District Offices.

Diversion

The practice of not prosecuting a youth in exchange for his agreement that he will live up to certain conditions. While the youth is not prosecuted, diversion programs may require that the youth admit to the crime before entering the program. Diversion programs in Massachusetts, to the extent that they exist, are operated out of the juvenile court.

Dual Status Youth

The term for a youth who was committed to DYS, was released to the community, and then was re-arrested

for another offense. If such a youth is held on bail in an adult facility, DYS will lodge a “detainer” so that if the youth is able to post bail, he will nonetheless not be allowed to go home, but, instead, will be returned to DYS custody. If, on the other hand, the youth is held on bail in a DYS detention unit, the youth who is able to post bail will be considered for a revocation. If such a youth is then re-committed for the new offense, he will be re-assessed, have another staffing, and be reclassified. The most serious offense will inform the decisions regarding his course of treatment at DYS. The new offense may result in a modification of the treatment response or may alter the treatment mode to focus on a more serious risk.

Education Liaison

An employee of a provider agency that contracts with DYS and is charged with advocating for educational services for DYS involved youth. Liaisons are based at the regional level of DYS; there are at least two liaisons per region. Among other responsibilities, liaisons request educational records for committed youth from local school districts and provide them to appropriate DYS staff, coordinate the activities between DYS and the youth’s local school district, assist youth entitled to special education services in accessing those services, and assist in the transition of youth from DYS back to community educational placements.

Extension of commitment

A process by which DYS used to seek a court order to extend a committed youth’s commitment from age 18 up to age 21, pursuant to Mass. Gen. L. ch. 120, §§ 16-19. In February 2009, the Massachusetts Supreme Judicial Court declared this process unconstitutional.

Extension of time assignment

A process by which DYS may seek to extend the treatment time that DYS has initially assigned to a youth pursuant to the classification grid.

Family Intervention Specialist

DYS staff persons that assist DYS caseworkers in identifying strategies for engaging youths' families to reduce youth recidivism, improve family relationships, and pursue educational, employment and treatment outcomes. The specialist's role may include direct family contact. There is one Family Intervention Specialist in each DYS region.

Graduated sanctions

A system of immediate and intermediate sanctions used at DYS District and Satellite Offices to address non-compliant behavior by DYS involved youth. Sanctions imposed vary depending on severity of violation, number and severity of prior violations, presence of other risk factors, and public safety. Youth are subject to more restrictive sanctions if there are repeated violations.

Grand Jury

A group usually consisting of 23 citizens that hears complaints and accusations in criminal cases committed within its jurisdiction, determines if such cases contain sufficient evidence to proceed with a trial, and issues indictments when the jury finds it necessary for a trial to take place.

Grant of Conditional Liberty (GCL)

A written agreement signed by DYS and a youth committed to DYS establishing a set of rules of conduct that the youth must follow in exchange for being allowed to leave a DYS secure program and being placed instead in a residential or community placement, such as a residential or community program or at home. If the youth violates any of these rules, DYS can increase the level of supervision or revoke the youth's liberty.

Grid level

The level (1-7) assigned to a committed youth

which corresponds with the severity of the offense that resulted in the commitment to DYS. Grid levels have a corresponding minimum treatment time recommendation at DYS. See also “classification grid.”

Group worker

The title for the DYS staff persons working with youth in DYS programs. There are three levels of group workers. Group worker 1 applies to line staff. Group worker 2 applies to Shift Supervisors. Group worker 3 applies to Shift Administrators. All three perform direct care of juveniles.

Health Care Team

A team which may include a Physician, Physician Assistant, Nurse Practitioner, Licensed Practical Nurse, Registered Nurse, Dentist and any medical specialist involved in the client’s health care. The team also may include the DYS Director of Health Services, the DYS Region’s HIV Educator, and the youth’s clinician on the unit.

Indigent

An individual or household found to be significantly poor or needy and unable to pay the costs of a proceeding. In this case, a public defender or other attorney must be appointed by the court.

Individualized Education Program (IEP)

A written plan that must be developed through a process overseen by the youth’s local school district for each youth found eligible for special education. The plan must describe what special educational services and accommodations a youth will receive. The plan must be developed by an education team composed of individuals with knowledge of the youth and must include, among others, schools officials and parents or legal guardians. Schools are required to provide any services contained in an IEP.

Juvenile Court

The state court hearing all juvenile matters involving juveniles, as well as certain cases involving child welfare regarding abuse, neglect and related custody issues, or children in need of services (CHINS). There are 11 divisions of the court, in Barnstable, Berkshire, Bristol, Essex, Franklin/Hampshire, Hampden, Middlesex, Norfolk, Plymouth, Suffolk and Worcester counties. The majority of courts have juvenile judges. However, in some locations, adult court judges handle juvenile matters.

Juvenile Court Clinic

Clinics, located in the Juvenile Court, that employ trained mental health professionals to conduct individual and family psychosocial, psychological and psychiatric evaluations of court-involved youth at the request of the court. The clinics are operated by vendors who are accountable to the Department of Mental Health and the Massachusetts Trial Court. These evaluations are not confidential and any information provided may be disclosed to the court.

Level of community supervision

The level of supervision that a DYS-committed youth residing in the community is assigned at a DYS District or Satellite Office, ranging from a high of four to a low of one. The higher the level assigned, the more intense DYS's supervision. This system operates using a combination of graduated sanctions, supervision, interventions and treatment.

Magistrate hearing

A hearing conducted by an Assistant Clerk Magistrate or Clerk Magistrate to determine whether a juvenile, typically who has not been arrested, and who is accused of a crime should have charges issued against him. Youths are not entitled to a lawyer for these hearings, but can bring their own. These hearings offer the opportunity for the resolution of the

matter short of formal charges.

Placement

The secure, residential or community placement in which DYS puts a youth.

Positive Youth Development (PYD)

An approach to rehabilitation, used by DYS, that emphasizes and builds on the strengths of the individual and his family, PYD calls for a network of community services (the Community Services Network) for its success.

Probation

A court-ordered status of court supervision in the community. This status may be ordered either pre-trial or upon adjudication of delinquency. The youth is allowed to remain in the community and must follow agreed-upon rules, such as reporting to the probation officer, attending school, and complying with a curfew.

Probation Officer (PO)

The public employee who monitors persons placed on probation. Probation officers assigned to the Juvenile Court supervise delinquency, youthful offenders, and neglect and abuse and Children in Need of Services (CHINS) cases. Probation Officers work for the Office of the Commissioner of Probation, a department of the Massachusetts Trial Court.

Program Director

The title for the head of a DYS program. Each program also has an Assistant Program Director. In addition, each program will have a Clinical Director.

Reception

The place within DYS where youth go immediately after they have been found delinquent. These units are now typically called Intake Units.

Regional Clinical Coordinator

A DYS staff person responsible for overseeing the clinical care of youths in a DYS region. There is one Regional Clinical Coordinator per DYS region.

Regional Director

DYS staff person charged with supervising one of the five DYS geographic regions: Central, Metro, Northeast, Southeast or Western. If a youth's parent or legal guardian has concerns that aren't being addressed by DYS staff working with a youth, he or she should bring the concerns to the Regional Director. A list of DYS regional offices is included in the Resource Guide at the end of this book.

Regional Review Team (RRT)

An administrative body in each DYS region composed of at least three DYS Senior Managers. The Regional Director of Operations chairs the RRT and the Regional Clinical Coordinator is considered a standing member. The RRT decides, among other things, appropriate classification (grid level, placement and anticipated time assignment) for newly committed youth or recommitted youth, as well as youth escalated to the RRT via the revocation process. Specifically, RRTs consider the recommendations developed at the staffing meeting for the youth regarding duration of treatment and placement, and accept or modify these recommendations. RRT decisions are made based on the following factors: caseworker recommendation; treatment required to reduce risk factors and the chances of recidivism; grid level; risk to public safety; and any other remarkable mitigating or aggravating factors. RRTs also approve all grid level deviation requests and extension of time assignments requests.

Relapse Prevention Plan

A DYS plan that DYS and a committed youth develop before the youth transitions back into the community

from a residential facility. The plan is designed to raise the youth's awareness of pressures and forces that got the youth into trouble in the first place and help the youth create ways to avoid or cope with them.

Resource Specialist

DYS staff persons based in DYS District and Satellite Offices who provide assistance to DYS caseworkers and other staff as they seek to identify clinical, family and other services for DYS involved youth. To fulfill this role, the specialists establish relationships with local community partners and state agencies/benefits providers.

Revocation

A process by which an impartial hearing officer revokes the grant of conditional liberty of a youth in the community (for violation of a provision or provision of that grant).

Revocation hearing

A hearing, presided over by an impartial hearing officer, to consider revoking a grant of conditional liberty for the youth's alleged violation of terms of that agreement. At the hearing, a hearing officer appointed by DYS evaluates and acts upon DYS' request to revoke the grant. A youth is not entitled to have an attorney appointed, but may bring one to the hearing. A parent also may be present. The hearing officer may impose one of the following options at disposition: no violation; return to custody for a certain period of time; take under advisement; or escalate to Regional Review Team postponement or continuance. The youth has a right to an appeal.

Rosie D. v. Patrick

Rosie D. is a class action federal court lawsuit that sought to compel the Commonwealth of Massachusetts to provide intensive home-based mental health services to individuals under age 21 with serious emotional disturbance, pursuant

to the federal Medicaid Act. Under the Act's Early Prevention, Screening, Diagnosis and Treatment (EPSDT) mandate, all states must screen eligible children, diagnose conditions found, and furnish appropriate treatment to correct or ameliorate physical and mental health issues (promptly and for as long as is needed). The outcome of the suit, by order issued in 2006, was that Massachusetts had to comply with this mandate. A remedial plan, issued in February 2007, sought to restructure the children's mental health system by incorporating intensive, home-based services, including behavioral health screenings, assessments, case management, crisis intervention, and in-home therapy supports. As youth confined to DYS are enrolled in MassHealth, they should benefit from this new service system, should they experience behavioral health issues.

Satellite Office

Community-based centers in some DYS regions that serve DYS involved youth who live in the community (residing with a parent, guardian, or foster parent or residing in an independent living program). Satellite Offices are run by DYS and vendors in partnership. The primary purpose of Satellite Offices is to provide youth with the intensive supervision and services in order to function and remain in the community. Like District Offices, Satellite Offices house DYS caseworkers who supervise youth and arrange for the provision of services. These caseworkers are supervised by DYS District Managers, located in DYS District Offices. There are 9 DYS Satellite Offices across the state.

Service delivery plan

An individualized, written plan that contains a brief assessment of a committed youth's needs in the community and DYS's plan for delivering services to address those needs. The plan is first developed at the youth's staffing. When a youth is in the community, his service delivery plan must be updated at least every six months or with every change in placement or level change. DYS committed youth also

have a Relapse Prevention Plan.

Special Education in Institutional Settings (SEIS)

A division of the state Department of Elementary and Secondary Education responsible for providing special education services to youth with disabilities residing in state facilities operated by the Departments of Mental Health, Public Health, and Youth Services, and in county correctional facilities. Previously called Educational Services in Institutional Settings (ESIS).

Staffing

The name for DYS's formal case conferences. There are various types of staffings that a youth may experience. The purpose of all DYS staffings is to provide a forum for open discussion regarding a youth's needs, which will be addressed in his service delivery plan.

One type of staffing is an **initial staffing** which occurs for newly committed youth at the assessment unit in order to determine the youth's needs. At the staffing, the youth's case history will be presented and the team will develop a recommendation for a range of time which a committed youth should spend in secure and residential treatment facilities and identify potential placement locations. The recommendation regarding duration of confinement is largely guided by DYS's classification grid, with consideration of risk to public safety and any other mitigating or aggravating factors. After the staffing, the Regional Review Team considers this recommendation in determining the youth's classification.

Another type of staffing is a **review staffing**, which occurs when a committed youth is recommitted to DYS. The review staffing is used to revise the service delivery plan. A review staffing may occur at any other time to re-evaluate a youth's service delivery plan. A review staffing shall occur every six months at a minimum or at change of placement. A review staffing is convened by the caseworker.

Another type of staffing is an ***emergency staffing***, which is held when there is an urgent matter regarding the youth to address. An emergency staffing is convened by the caseworker.

Another type of staffing is an ***administrative staffing***. An administrative staffing is scheduled with the DYS Regional Administration in order to review a case without the youth or parent present. It is most commonly used for cases with special circumstances that need to be discussed and may alter a youth's service delivery plan.

Another type of staffing is a ***transfer staffing/inter-regional transfer***. A transfer staffing is held for any committed youth whose parent or legal guardian has moved from one DYS region to another.

Status offense

A term that once referred to an act that was a violation of the law only when committed by a juvenile, such as running away and truancy. These acts have now been decriminalized and now constitute the basis for a CHINS petition. Youths cannot end up in the DYS system for having committed these acts.

Teaching Coordinator

A DYS provider employee in each program who oversees on-site education services and teacher staff development.

Treatment plan

An individualized plan first developed for a youth at the initial staffing containing an assessment of a youth's needs, measurable short and long term goals and objectives, and the methods to be used to reach these objectives at the youth's program. Over time, the program develops and a licensed clinician approves the plan.

Treatment unit

A DYS unit where youths committed to DYS receive treatment. A youth is placed on a treatment unit after a stay on an assessment unit. Youths on treatment units meet the “treatment time” obligations set by the Regional Review Team.

Youthful Offender

A youth indicted by a prosecutor for a qualifying reason and adjudicated as a youthful offender after trial or plea. Youthful offenders may be committed to DYS to age 21, may receive any sentence to which an adult may be sentenced for the same offense, or may be committed to DYS to age 21 with concurrent adult probation and/or an adult suspended sentence.

CHAPTER 3:

HOW YOUTHS BECOME INVOLVED WITH THE JUVENILE JUSTICE SYSTEM

Personal risk factors	3.2
Mental health problems	3.2
Education-related disabilities.....	3.3
Drug or alcohol abuse	3.3
Environmental risk factors	3.3
Surroundings	3.3
Experiencing violence	3.4
Family instability	3.4
Department of Children and Families	3.4
Warning signs	3.5
School failure.....	3.5
Weapons	3.5
Drug dealing	3.5
How youth typically come to DYS through the court system	3.6
Probation surrender.....	3.6
Child in Need of Services	3.6
Racism, discrimination, and stigma	3.7
Disproportionate Minority Contact	3.7
Discrimination and stigma experienced by lesbian, gay, bisexual, transgender, or queer youth.....	3.9

HOW YOUTHS BECOME INVOLVED WITH THE JUVENILE JUSTICE SYSTEM

Youths who end up involved with the juvenile justice system often have common characteristics or problems. By being sensitive to these characteristics and addressing these problems early on, youths may be able to avoid juvenile justice system involvement.

Personal risk factors

Mental health problems

There are many youths with mental health problems in the juvenile justice system.¹¹ One analysis has concluded that approximately 20% of youths in the juvenile justice system have a *serious mental disorder*.² A 2006 study of detained youths in urban Illinois found that nearly two-thirds of males and three-quarters of females met diagnostic criteria for one or more psychiatric disorders.³ Many of these youths had two or more psychiatric disorders.⁴ Further, many of these youths with a psychiatric disorder also had a substance use disorder.⁵

Similarly, a 2004 Massachusetts study concluded that 60-70% of youths in DYS facilities had symptoms of significant mental disturbance.⁶ In 2010, DYS reports that approximately 20% of DYS-involved youth arrive at DYS with a history of previous prescriptions for psychiatric medication and treatment.⁷

While having a mental health problem poses a personal risk factor, it is important to remember that the vast majority of youths with mental health problems will never become involved in the juvenile justice system.

-
- 1 R.K. Otto *et al.*, Prevalence of mental disorders among youth in the juvenile justice system (1992), in Joseph Coccozza (ed.), *Responding to the Mental Health Needs of Youth in the Juvenile Justice System* (National Coalition for the Mentally Ill in the Criminal Justice System 1992) at 7-48; National Center for Mental Health and Juvenile Justice, Key Issues at <http://www.ncmhjj.com/faqs/default.asp>.
 - 2 Joseph Coccozza and Kathleen Skowrya, Youth with Mental Health Disorders: Issues and Emerging Responses, *Juvenile Justice Journal*, OJJDP (2000).
 - 3 Linda A. Teplin *et al.*, Psychiatric Disorders of Youth in Detention, Office of Juvenile Justice and Delinquency Prevention Bulletin (April 2006) at 2, <http://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf>.
 - 4 Linda A. Teplin *et al.*, Psychiatric Disorders of Youth in Detention, Office of Juvenile Justice and Delinquency Prevention Bulletin (April 2006) at 6, <http://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf>.
 - 5 Linda A. Teplin *et al.*, Psychiatric Disorders of Youth in Detention, Office of Juvenile Justice and Delinquency Prevention Bulletin (April 2006) at 7, <http://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf>.
 - 6 Thomas Grisso *et al.*, *Mental Health and Juvenile Justice Systems: Responding to the Needs of Youth with Mental Health Conditions and Delinquency*, Issue Brief, Center for Mental Health Services Research, University of Massachusetts Medical School (Mar. 2004) Vol. 1, Issue 3 at 1.
 - 7 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 2.
-

Education-related disabilities

Large numbers of youths charged with criminal offenses have either identified or undiscovered education-related disabilities, particularly learning and emotional disabilities.⁸

While having an education-related disability poses a personal risk factor, it is important to remember that the vast majority of youths with such disabilities will never become involved in the juvenile justice system.

Drug or alcohol abuse

There are many youths with drug and alcohol problems in the juvenile justice system. The 2006 study of detained youth in urban Illinois referenced above found that one-half of males and almost one-half of females met criteria for a substance use disorder.⁹

While substance abuse does not cause delinquent behavior and many youths with this problem will never become involved in the juvenile justice system, there is a correlation between substance abuse and delinquency.¹⁰

Environmental risk factors

Surroundings

As of January 1, 2004, 62% of new commitments to DYS came from ten cities in Massachusetts: Boston, Worcester, Fall River, Brockton, Lowell, Springfield, Lawrence, New Bedford, Lynn, and Holyoke.¹¹ While there are multiple factors that contribute to this phenomenon, the statistic should lead advocates to focus carefully on meeting the needs of youths in these communities before they become involved in the juvenile justice system.

8 Sue Burrell and Loren Warboys, Special Education and the Juvenile Justice System, OJJDP(July 2000) at 3, http://www.ncjrs.gov/html/ojjdp/2000_6_5/contents.html.

9 Linda A. Teplin *et al.*, Psychiatric Disorders of Youth in Detention, Office of Juvenile Justice and Delinquency Prevention Bulletin (April 2006) at 2, <http://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf>.

10 Anne H. Crowe and Shay Blichik, "Consequences of Youth Substance Abuse" in "Drug Identification and Testing in the Juvenile Justice System" (1998), available at <http://ojjdp.ncjrs.org/PUBS/drugid>.

11 Executive Office of Public Safety and Security, Massachusetts Juvenile Justice Data and Information (Dec. 2004) at 18, http://www.mass.gov/eeops/docs/programs/fjj/mass_juvenile_justice_data_version_july05.doc/.

Experiencing violence

Youths who have experienced or witnessed violence (including domestic violence) also are at risk of involvement in the juvenile justice system. In fact, family abuse and exposure to violence are the most significant predictors of juvenile violence when comparing delinquents and non-delinquents.¹²

The relationship between violence, trauma, and involvement in the juvenile justice system is particularly noteworthy for girls. A study of girls in the California juvenile justice system found that 92% of the girls reported having been subjected to some form of emotional, physical and/or sexual abuse.¹³

Family instability

Youths who have experienced an unstable home life also are at risk of involvement in the juvenile justice system. For example, one risk factor of juvenile justice involvement is living in a family in which there is no parent who has full-time, year-round employment.¹⁴

Department of Children and Families

Youths involved with the Department of Children and Families (DCF) also are at risk of DYS involvement. Nearly 55% of the DYS committed population received DCF services prior to commitment.¹⁵ In 2002 DYS estimated that about 75% of girls committed to DYS had been previously involved with DCF (as compared to 45% of committed boys).¹⁶ In 2010, DYS reported that 75% of detained and committed girls and 55% of detained and committed boys had prior DCF involvement.¹⁷

12 Frank Lexcen and Richard E. Redding, Mental Health Needs of Juvenile Offenders. Juvenile Justice Fact Sheet. Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia (2000), http://www.ilppp.virginia.edu/Juvenile_Forensic_Fact_Sheets/MHNeedsJuvOff.html.

13 Leslie Acoca & Kelly Dedel, No Place to Hide: Understanding and Meeting the Needs of Girls in the California Juvenile Justice System, National Council on Crime and Delinquency (1998).

14 See, e.g., F.S.U. Center for Prevention and Early Intervention Policy, Family Risk Factors and the Link to Adolescent Childbearing (2005) at 1, http://www.cpeip.fsu.edu/resourceFiles/resourceFile_72.pdf.

15 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 2.


16 Erin Trahan, "Navigating DYS" in Girls' Coalition Newsletter (Fall 2002/Winter 2003), http://www.girlscoalition.org/uploads/issues/FALL.02_WINTER.03.pdf, at 8.

17 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 2.

Warning signs

School failure

School failure is a warning sign for future involvement in the juvenile justice system. Trained educators (and observant parents) can detect likelihood of academic failure as early as grades 1 – 3. Children who are not reading at grade level at the end of grade 3 are particularly at risk.¹⁸ Among older youths, a 2000 report found that 47% of court-identified truants are arraigned within three years.¹⁹

 **Tip for families:** It is important to monitor your child's school progress from an early age and to talk to school staff if you think your child is not doing well. Once children fall behind in school, it is difficult for them to catch up. Additionally, children can suffer as a result of their school failures and can carry this damage with them through adolescence.

Weapons

Carrying weapons also is a warning sign for future DYS involvement. Many children and teenagers carry weapons (such as box cutters, knives, or guns) because they feel that it is necessary for protection from street life. However, a youth is at risk of arrest if he uses a weapon or even is caught with a weapon in his possession.

Drug dealing

Possessing, using, or dealing an illegal substance is also a warning sign for future DYS involvement. A youth may be arrested for any of these activities. Additionally, involvement with drugs may lead to other criminal acts such as larceny or assault.


18 See, e.g., Institute of Educational Sciences, National Center for Education Statistics, The Condition of Education, Learner Outcomes (2006) at <http://nces.ed.gov/programs/coe/2006/section2/index.asp>.

19 Citizens for Juvenile Justice (CfJJ), 2000 Fact Book: Trends & Issues in Juvenile Delinquency (hereinafter "2000 Fact Book") (2000) at 15 (citing Probation Commissioner Report of 1998), <http://www.cfjj.org/Pdf/FB2000.pdf>.

How youth typically come to DYS through the court system

Probation surrender

The majority of youths committed to DYS are committed after failing to meet one or more conditions of probation, resulting in losing one's right to be at liberty on probation (i.e., a "probation surrender").

 **Tip for families:** For this reason, it is essential, in a delinquency matter, for you to be involved when your child's conditions of probation are developed. You should make sure that the terms of probation are reasonable and that your child will be able to meet them. You should work with your child's lawyer to make sure your child doesn't agree to something he cannot do. You should monitor your child's compliance until his probation has been completed

Child in Need of Services

A Child in Need of Services (CHINS) case deals with a child who has not committed a crime, but is acting out in some other way. These behaviors include:

- A child below age 17 who runs away;
- A child below age 17 who refuses to obey the lawful and reasonable commands of his parent or legal guardian;
- A child between the ages of 6 and 16 who repeatedly and willfully fails to attend school or repeatedly breaks school rules.²⁰

Parents, legal guardians, school officials, and police may petition the juvenile court for a CHINS petition. (Who specifically may petition depends on the problem being alleged.)

If the CHINS petition is successful and the judge adjudicates the child in need of services, the court may place the child with any adult qualified to receive and care for the child. The most restrictive alternative is placement of the child in the care and custody of the Department of Children and Families (DCF). (The judge may not commit a child to DYS pursuant to a CHINS petition.)

²⁰ Mass. Gen. L. ch. 119, §§ 21, 39E.

A youth who is the subject of a child-in-need-of-services (CHINS) case is highly likely to become involved with DYS. While CHINS is not a criminal proceeding, research conducted by the Probation Commissioner found that 54% of children in CHINS cases were arraigned (charged) in juvenile or adult courts within three years of initial contact with the courts.²¹ Nearly three-quarters of school-initiated CHINS juveniles are later arraigned in court on delinquency or youthful offender charges.²²

Racism, discrimination, and stigma

Disproportionate Minority Contact

Unfortunately, youths of color are at risk of involvement with the juvenile justice system. Concern exists that youths of color are funneled into the juvenile justice system at higher rates than their white peers. While it is not fully clear, because of lack of data, all the points at which this pattern occurs or the reasons for this pattern, the outcomes are clear.

When youths of color come in contact with the juvenile justice system (e.g. police stop, arrest, arraignment, commitment, etc.) at rates that exceed their representation in the larger community, it is called “disproportionate minority contact.” People studying disproportionate minority contact have found that children of color are not committing more crime than their white counterparts.

Rather, different treatment of members of communities of color at various points in the system contribute to this phenomenon. For example, communities of color tend to be urban and are policed differently than white suburbs. Courts handle cases in urban areas differently than courts handle cases in suburban regions. School administrations in urban communities respond differently to problem situations than do their suburban counterparts. In summary, there are many reasons that youths of color are arrested and prosecuted more frequently than their white peers.

The data that does exist in Massachusetts is troubling. In 2003, minority youths accounted for only 24% of the total youth population in Massachusetts, but accounted for 39% of probation placements, 58% of detention placements, 62% of the DYS commitments and 64% of youths

21 Citizens for Juvenile Justice, 2000 Fact Book at 4, <http://www.cfjj.org/Pdf/FB2000.pdf>.

22 Citizens for Juvenile Justice, A Fact Book: Trends & Issues in Juvenile Delinquency (1999) at 5, <http://www.cfjj.org/Pdf/Factbook1999.pdf>.

sent to alternative lockup programs.²³ At that point, youths of color were overrepresented at every point of contact within the Massachusetts juvenile justice system.²⁴

In 2006, the Juvenile Detention Alternatives Initiative, one goal of which is to reduce racial disparities in the juvenile justice system, selected Massachusetts as a site for its work. As part of the JDAI project, DYS completed a detention utilization study in 2008, examining data from two pilot sites: Suffolk and Worcester counties.²⁵ The study found drops in the number of youth detained between 2007 and 2008 at the two pilot sites.²⁶ And, at both pilot sites, the drops in the number of youth detained were greater for youth of color than for white youth.²⁷ Yet, DYS reports that in 2008 statewide detentions of youth of color exceeded those of white youth by 52%.²⁸ The initiative's efforts to reduce disproportionate minority contact is ongoing in Massachusetts, with three related goals:

1. reduce the number of minority youth who go to detention;
2. increase the chance that minority youth who do go will be bailed; and
3. reduce the length of stay in detention for minority youth.²⁹

Despite the fact that disproportionate minority contact is a serious problem in Massachusetts, it is important to remember that most youths of color will never become involved with the juvenile justice system.

23 Mass. Exec. Office of Public Safety, Programs Division, Mass. Juvenile Justice Data and Information (Dec. 2004), <http://www.burnsinstitute.org/dmc/ma/massdata.pdf> at 146, 155, 118.

24 Mass. Exec. Office of Public Safety, Programs Division, Mass. Juvenile Justice Data and Information (Dec. 2004), <http://www.burnsinstitute.org/dmc/ma/massdata.pdf> at 146, 155, 118.

25 Robert Tansi, DYS, Juvenile Detention Alternatives Initiative: Massachusetts Detention Utilization Study Suffolk and Worcester Counties (Sept. 10, 2008), available at <http://www.jdaihelpdesk.org/Docs/Documents/JDAIDUSReport0808.pdf>.

26 Robert Tansi, DYS, Juvenile Detention Alternatives Initiative: Massachusetts Detention Utilization Study Suffolk and Worcester Counties (Sept. 10, 2008), available at <http://www.jdaihelpdesk.org/Docs/Documents/JDAIDUSReport0808.pdf>.

27 Robert Tansi, DYS, Juvenile Detention Alternatives Initiative: Massachusetts Detention Utilization Study Suffolk and Worcester Counties (Sept. 10, 2008), available at <http://www.jdaihelpdesk.org/Docs/Documents/JDAIDUSReport0808.pdf>.

28 Jane Tewksbury, DYS, The Commissioner's Corner: Focus on Reducing Disproportionate Minority Contact in the Massachusetts JDAI (Feb. 2009), available at <http://www.jdaihelpdesk.org/Docs/Documents/Commissioner's%20Corner%20-%2009%20-%20JDAI%20-%20Focus%20On%20Reducing%20Disproportionate%20Minority%20Contact.pdf> at 1.

29 Jane Tewksbury, DYS, The Commissioner's Corner: Focus on Reducing Disproportionate Minority Contact in the Massachusetts JDAI (Feb. 2009), available at <http://www.jdaihelpdesk.org/Docs/Documents/Commissioner's%20Corner%20-%2009%20-%20JDAI%20-%20Focus%20On%20Reducing%20Disproportionate%20Minority%20Contact.pdf> at 2.

Discrimination and stigma experienced by lesbian, gay, bisexual, transgender, or queer youth

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) youth are disproportionately represented among youths who are at risk for contact with the juvenile justice system.³⁰ This problem is due to the response of systems and people in authority to persons of certain sexual identities.

There are a number of specific reasons for LGBTQ overrepresentation in the juvenile justice system. LGBTQ youths have heightened risk for a number of conditions that increase the likelihood of juvenile justice contact including: homelessness and runaway status; involvement in survival crimes such as theft and prostitution; violence and harassment in school leading to poor performance and participation; social isolation; and high rates of depression, stress and substance abuse due to family and societal rejection.³¹ A study has also found that LGBTQ youths are more likely than the general youth population to have been physically abused.³² Another study found that students who either identified as gay, lesbian, or bisexual or reported any same-sex sexual contact were significantly more likely than other students to have been involved with gangs.³³ Further, one report found that police were selectively enforcing certain laws, resulting in disproportionate arrests of transgender youths and LGBTQ youths of color.³⁴ For youths of color these sexual identity issues may be compounded by race-based discrimination and marginalization.³⁵ While data about the numbers of LGBTQ youths in the justice system nationwide is not available, one New York study linked LGBTQ youths

30 The Equity Project, The Need for the Equity Project, at http://www.equityproject.org/about_us.php. For a detailed discussion of the terms used to identify youth in this section, see Barbara Fedders, Coming Out For Kids: Recognizing, Respecting and Representing LGBTQ Youth, Nevada Law Journal, Vol. 6, 101-134 (2006).

31 The Equity Project, The Need for the Equity Project, at http://www.equityproject.org/about_us.php.

32 Colleen Sullivan *et al.*, Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care (2001), http://www.lambdalegal.org/binary-data/LAMBDA_PDF/pdf/25.pdf.

33 Elizabeth Spinney, Exec. Office of Pub. Safety, Massachusetts Juvenile Justice Data and Information (2004), <http://www.burnsinstitute.org/dmc/ma/massdata.pdf>.

34 Amnesty Int'l, Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S. 3 (2005), <http://web.amnesty.org/library/index/ENGAMR511222005>.

35 Barbara Fedders, Coming Out For Kids: Recognizing, Respecting and Representing LGBTQ Youth, Nevada Law Journal, Vol. 6, 101-134 (2006) at 117.

with heightened risk of involvement with the juvenile justice system.³⁶

One legal researcher suggests that even those individuals providing legal representation to LGBTQ youths need, first, to understand the ways in which LGBTQ youths are uniquely vulnerable to trauma, abuse, violence, and discrimination; and, second, to pursue sensitive and supportive advocacy strategies with their clients.³⁷ Moreover, once LGBTQ youths enter the juvenile justice system, advocates should be watchful. Particularly, advocates should be concerned about the potential for discriminatory or even abusive treatment by staff and fellow residents, unnecessary use of isolation and segregation, and inappropriate sexual offense charges arising from consensual same-sex conduct.³⁸

Despite the discrimination and stigma faced by LGBTQ youths, having a non-majority sexual identity in itself is not a problem, and most LGBTQ youths never will become involved with the juvenile justice system.

³⁶ Randi Feinstein *et al.*, Urban Justice Ctr., Justice For All?: A Report On Lesbian, Gay, Bisexual And Transgendered Youth In The NY Juvenile Justice System 15, 18 (2001). <http://www.urbanjustice.org/publications/pdfs/lesbianandgay/justiceforallreport.pdf>.

³⁷ Barbara Fedders, Coming Out For Kids: Recognizing, Respecting and Representing LGBTQ Youth, Nevada Law Journal, Vol. 6, 101-134 (2006) at 128.

³⁸ See The Equity Project, The Need for the Equity Project, at http://www.equityproject.org/about_us.php; see also Shannan Wilbur *et al.*, Child Welfare Legal of America, Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care (2006), <http://www.cwla.org/pubs/pubdetails.asp?PUBID=10951>.

CHAPTER 4:

PREVENTION

Evaluating a youth's needs	4.2
Finding resources	4.2

PREVENTION


Evaluating a youth's needs

When a youth is having troubles, it is important to evaluate his needs. Even when risk factors are present, there are many steps that parents can take to help prevent their children from becoming involved with the juvenile justice system. When discussing these steps, it is helpful to evaluate a youth's needs in the following five areas:

- Educational (including special education) and economic opportunities;
- Safe places to live and play;
- Good mental and physical health care;
- Relationships with nurturing adults and peers;
- Opportunities for civic and/or spiritual engagement.¹

For example, if a youth is acting out in or not attending school, there is usually a reason. It is important to find out from the child or otherwise what is wrong.

Once the problem is identified, the family can ask the school staff to help identify the need and provide appropriate services to address it. If your child receives special education services, see if the school is providing all the services listed on his IEP. If your child is not receiving special education services, consider whether he should be evaluated for special education eligibility.


 **Tip for families:** Rather than blaming your child for his troubles, try to identify his needs, think about whether they are being met, and seek help.

Finding resources

Once a youth's unmet needs have been identified, one can seek resources to address them. The Resource Guide at the end of this book provides selected resources in each of the above five areas of need. Quick and convenient exploration of many of these resources requires a computer with internet access. In many cases, the internet address listed

¹ These competencies are articulated in the Youth Development Approach taught by the Best Initiative at the Medical Foundation of Boston. For more information on the Youth Development Approach, see http://www.youthworkcentral.org/youth_development.html.

will provide links to a number of agencies and programs. If a computer is unavailable direct contact may be necessary. The Mental Health Legal Advisors Committee does not endorse the agencies and programs listed on the cited web pages. Be sure to research agencies and programs thoroughly before accepting services. Finally, this list is not complete; the fact that a program is not listed does not mean it is not a good program.

 **Tip for families:** Be proactive. You may be able to prevent your child from becoming involved with the juvenile justice system later on if you help your child to recognize and address behavior problems now.

CHAPTER 5:

AFTER THE ARREST

Role of the police officer.....	5.3
Role of the probation officer and bail commissioner while the youth is held at the police station or in pre-arraignment detention	5.3
Pre-arraignment detention in an Alternative Lockup Program	5.4
Conditions for youths in pre-arraignment detention facilities	5.5
Continuing a youth’s medication during confinement at the police station or in a pre-arraignment detention facility	5.6
Appearing in court for the arraignment and bail hearing	5.7
Role of the probation officer on the day of arraignment.....	5.8
The youth’s lawyer	5.9
The arraignment hearing	5.10
The bail hearing	5.10
Post-arraignment detention.....	5.11
Juvenile Detention Alternative Initiative	5.13
Placing a youth in DCF care or custody in post	

arraignment detention5.13
Diversion5.14
Preparation for trial5.16
Predisposition mental health reviews5.16
Juvenile court clinic evaluation5.16
Independent clinical evaluation5.17
Reasons for evaluations.....5.18
Before pursuing an evaluation5.18

AFTER THE ARREST

Role of the police officer

When a youth is arrested, the police officer will take him to the police station. The police are required to contact the youth's parents, legal guardian, or person with whom the youth resides to report what has happened.¹ The police also are required to contact an on-call probation officer (discussed below) and a bail commissioner.²

The police may ask that a parent, legal guardian or person with whom the youth resides pick the youth up.³ But more likely, the police will take the youth from the police station to court, if court is still in session.⁴ If court is not in session and bail has not been posted, the youth will be taken to pre-arraignment detention, known as an Alternative Lockup Program (ALP), until the next day that court is open.⁵

A youth may only be held in a police holding cell for up to six hours before being taken to court or to an ALP.⁶ In addition, arrested youths must be held separately from adults.⁷ There must be sight and sound separation, not just physical separation.

Role of the probation officer and bail commissioner while the youth is held at the police station or in pre-arraignment detention

If the police do not immediately release the youth home and the youth is being detained at a police station or in pre-arraignment detention (an ALP), the youth is entitled to have a bail commissioner set bail.⁸ A bail commissioner is the state-appointed person who may set the amount of bail for a youth detained at a police station prior to arraignment in court.

1 Mass. Gen. L. ch. 119, § 67; Mass. R. Crim. P. 7(a)(1).

2 Mass. Gen. L. ch. 119, § 67; Mass. R. Crim. P. 7(a)(1).

3 Mass. Gen. L. ch. 119, § 67.

4 Mass. Gen. L. ch. 119, § 67.

5 Mass. Gen. L. ch. 119, § 67. For a comprehensive critique of the operation of ALPs in Massachusetts, see "A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security, by Robin L. Dahlbert, ACLU (2008), available at http://www.aclum.org/lockingupkids/pdf/looming_crisis_web.pdf.

6 42 U.S.C. § 5633(a)(13)(A); see also Commonwealth of Massachusetts, Executive Order 339, Alternative Facilities of Pretrial Detention of Juveniles (Aug. 14, 1992).


7 42 U.S.C. § 5633(a)(13); see also Commonwealth of Massachusetts, Executive Order 339, Alternative Facilities of Pretrial Detention of Juveniles (Aug. 14, 1992).

8 Mass. Gen. L. ch. 276, §§ 42, 57, 58. The bail statute, Mass. Gen. L. ch. 276, § 58, does not expressly refer to juveniles, but Mass. Gen. L. ch. 119, § 67, governing post arrest detention of juveniles, states that nothing prevents a juvenile detained under that provision from being admitted to bail.

Upon being contacted by the police, the probation officer will make a recommendation, based upon the youth's past record, the police officer's description of the alleged event, and other factors regarding whether or not the youth should be held until his first court appearance.⁹

If the probation officer recommends that the youth be held, this recommendation is supposed to be forwarded to the bail commissioner.¹⁰ The bail commissioner then should hold a hearing at the police station or in pre-arraignment detention. The bail commissioner assesses the likelihood that the youth will voluntarily appear in court and the risk of danger to others posed by the youth.¹¹ The bail commissioner may order the person released, set a cash bail or order the person held without bail.¹²

Unfortunately, this process is not always followed in many counties. Instead, some police officers do not contact a bail commissioner, but instead illegally hold the youth until the youth's court date solely at the recommendation of the probation officer.¹³ In some areas, bail commissioners refuse to come to the station or ALP to set bail in cases involving juveniles.

 **Tip for families:** If your child is not getting released from the police station or an ALP and you suspect that the bail commissioner has not been contacted, parents should insist that the police call the bail commissioner. A bail commissioner is always on call. If the police refuse to call a bail commissioner, you should inform your child's lawyer when in court. If you suspect that an officer has called a bail commissioner who refused to come, you should inform the child's lawyer and notify the Bail Administrator (who is in charge of bail commissioners) at (617) 788-8130.

Pre-arraignment detention in an Alternative Lockup Program

A pre-arraignment detention facility is a place where a youth may be held outside his home after arrest and until his first court appearance (arraignment). While the youth typically will be held in pre-arraignment detention for one night, a youth could be held longer, such as over a long weekend.

⁹ Mass. Gen. L. ch. 119, § 67.

¹⁰ See Mass. Gen. L. ch. 119, § 67 ("Nothing contained in this section shall prevent the admitting of such child to bail in accordance with law.").

¹¹ Mass. Gen. L. ch. 276, § 57.

¹² Mass. Gen. L. ch. 276, § 57.

¹³ See Barbara Fedders and Barbara Kaban, Do You Know Where the Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail (2006) at 8, <http://www.prisonpolicy.org/kidsbail/>.

Depending on what a youth is accused of doing, this placement either will be in a hardware secure or a non-secure facility, referring to how restricted the youth's movement is in the program.

If a youth is accused of a serious or violent crime, he is likely to be held in a secure facility. By contrast, if a youth is accused of a minor offense, he may be held in a non-secure facility, although the process is set up so that non-secure facilities may reject certain youths and they are then held in secure facilities.¹⁴

The secure ALPs are administered by the state Executive Office of Public Safety and Security (EOPSS) which, in turn, contracts with service providers to run the programs, while the non-secure ALPs are overseen by the Department of Children and Families (DCF), which similarly contracts with providers.¹⁵

Prior to July 1, 2008, the Boston Police Department operated its own detention facility, but the facility has closed. DYS does not run any ALP programs.

Conditions for youths in pre-arraignment detention facilities

Since pre-arraignment detention facilities or ALPs are operated by different providers, each with their own rules and practices, conditions vary. Advocates have raised concerns regarding certain conditions in some facilities. For example, advocates have noted lack of access to prescribed medications, same-sex supervisors for girls, and reading materials.¹⁶

Recently, advocates have expressed particular unease with ALP oversight by EOPSS. While all the non-secure ALPs and three secure ALPs are licensed and therefore regulated by the state Department of Early Education and Care (DEEC), the two secure ALPs overseen by EOPSS (the Essex and Bristol County Sheriffs' Offices) are not DEEC-

14 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 14 & Table 5.

15 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 15.

16 Barbara Fedders and Barbara Kaban, *Do You Know Where the Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail* (2006), <http://www.prisonpolicy.org/kidsbail/>, at 9.

licensed.¹⁷ Advocates find this problematic.¹⁸ Advocates argue that all ALPS should be considered “temporary shelter facilities” and should maintain a license, as such facilities must be pursuant to Mass. Gen. Law ch. 15D, § 11, from DEEC.¹⁹

Advocates seek DEEC licensure since DEEC-licensed ALPs must comply with DEEC regulations.²⁰ These regulations require that programs:

- prohibit practices that force youths to wear clothing that identifies them as coming from a residential facility;
- have a staff-to-youth ratio appropriate to the age, capabilities, and needs of the children;
- have gender-appropriate and trained staff;
- have sanitary and safe facilities, with at least one tub or shower for every six residents; and
- use approved behavior management techniques and policies and procedures governing the use of restraints.²¹

Continuing a youth’s medication during confinement at the police station or in a pre-arraignment detention facility

While a youth has the right to continue taking needed medication while being held outside the home, including at a police station or a pre-arraignment detention facility, enjoying this right in practice may be difficult. For example, a police station or facility may not accept medications for a confined youth from family or other outside parties and their policies about filling a doctor’s prescription order will likely vary, if staff will do so at all.


17 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 7.


18 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 6.

19 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 23.

20 Robin L. Dahlberg, American Civil Liberties Union, *A Looming Crisis: The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security* (2008), http://www.aclu.org/pdfs/racialjustice/aloomingcrisis_report.pdf, at 23.

21 102 CMR 3.07(4)(a); 102 CMR 3.07(2)(d); 102 CMR 3.07 (2)(a); 102 CMR 3.04(7)(a)(1); 102 CMR 3.08(5), (8); 102 CMR 3.07(7)(a).


 **Tip for families:** Be sure to inform those running the facility where your child is held of his medical needs and medications. Given the lack of a consistent practice or policy regarding medication across pre-arraignment detention facilities, you should ask the supervisor of the facility about the practice there. You can ask what resources are available to staff for your child (such as medical staff on call) and how the facility can best meet your child's medication needs.


 **Tip for families:** Be sure to inform those running the facility where your child is held of his medical needs and medications. Given the lack of a consistent practice or policy regarding medication across pre-arraignment detention facilities, you should ask the supervisor of the facility about the practice there. You can ask what resources are available to staff for your child (such as medical staff on call) and how the facility can best meet your child's medication needs.

In a medical emergency, all pre-arraignment detention facilities have the capacity to transport a youth to a hospital emergency room. This option should only be pursued, of course, in a genuine medical emergency.

Appearing in court for the arraignment and bail hearing

On the first business day after a youth's arrest, he will have to appear in court for the arraignment and bail hearing.²² The court also will require the youth's parent or legal guardian to appear in court for this hearing and future proceedings.²³

 **Tip for families:** If your child has been released to you, or if you posted bail, it is your responsibility to ensure that your child appear in court for his arraignment.

 **Tip for families:** It is essential to your child's interests that you attend this and subsequent hearings. Some judges will not conduct hearings unless a parent or other interested adult is present.

²² Mass. R. Crim. P. 7; Mass. Gen. L. ch. 276, § 58.

²³ Mass. Gen. L. ch. 119, § 55.

👉 Tip for families: Many parents find it difficult to attend court proceedings because of work. If possible, you should take the days off and go to court with your child. If you absolutely cannot take the days off work (for example, you will be fired if you do), but you can attend at least the first hearing, let the judge know your situation. The judge may schedule future proceedings around your schedule, if it is possible. If the judge cannot or will not do this, another interested adult may attend instead. This adult can be the child's aunt, uncle, grandparent, or other adult relative.

Role of the probation officer on the day of arraignment

Once the youth arrives at court for the arraignment, the probation officer is required to interview the youth and make a report to the court on the issues of bail and indigency.²⁴ Typically, the probation officer will interview both the youth and his parents or legal guardian on the morning of the arraignment.²⁵ The information that the youth or the youth's family provides to the probation officer is not confidential and may be used where there is a question of bail, to inform the judge as to whether the child is entitled to appointed counsel, or for other purposes.


The probation officer will use the juvenile intake form in conducting this interview.²⁶ The probation officer will ask about topics including previous court involvement, family history, family finances, school attendance and performance. The officer also will seek to identify any mental health issues.²⁷

²⁴ Mass. R. Crim. P. 7(a)(1).

²⁵ Hon. Jay Blitzman et al., Massachusetts Juvenile Court Bench Book, Mass. Continuing Legal Education, Vol. I, at § 1.3.2.


²⁶ This intake process is governed by Supreme Judicial Court Rule 3:10.

²⁷ Hon. Jay Blitzman et al., Massachusetts Juvenile Court Bench Book, Mass. Continuing Legal Education, Vol. I, at § 1.4.1.


 **Tip for families:** It is critical to remember that information provided to a probation officer is not confidential. Thus, you may choose to decline to answer questions. If you do answer, you should answer truthfully. Further, do not overstate your child’s problems as that may increase the chances that your child will be recommended for commitment, as opposed to probation. There are some risks in refusing to answer questions. These risks include the possibility that the probation officer will inform the judge that the family wasn’t cooperative and that information will in some way influence the judge’s perspective or sway the judge to take some child protective action (i.e. file a report of suspected abuse or neglect with the Department of Children and Families, file a petition in court alleging that your child is in need of emergency care and protection, or appoint a guardian *ad litem* to assist the judge). Also, if you refuse to answer financial questions, your child might not be appointed an attorney.

The youth’s lawyer

Youths have a right to counsel in juvenile delinquency proceedings.²⁸ If a family cannot afford to hire a lawyer for the youth, the court will appoint one to handle the case.²⁹ Appointment occurs at the day of the arraignment.

 **Tip for families:** If you plan to hire a lawyer for your child, you may retain one prior to the time of the arraignment. Try to hire one right away, even before the arraignment.

Whether the lawyer is appointed by the court or privately hired, he or she should meet with the youth before the arraignment.³⁰

 **Tip for families:** If you cannot afford a lawyer for your child, tell the court that you wish to have them appoint one. Be aware that if the court appoints a lawyer for a youth, it will also most likely assess the youth a fee of \$150 for the lawyer’s services. The fee does not go to the lawyer, but to a “court fund.” The family must pay the fee by the time the case ends.

Regardless of whether the family or the court pays for the youth’s

28 *In re Gault*, 387 U.S. 1, 36 (1967).

29 Mass. R. Crim.P.7(a)(1).

30 Committee for Public Counsel Performance Guidelines Governing the Representation of Indigent Juveniles in Criminal Cases, II. J.2.1.a), c).

lawyer, the lawyer represents the youth and not the family. Ultimately, the youth and his lawyer make the final legal decisions, but they will usually seek the parent or guardian's input.

The arraignment hearing

The first hearing is the arraignment. Three things typically happen at the arraignment. First, the court will tell the youth what he is charged with.³¹ Secondly, a plea of “not delinquent” will be entered.³² Usually this occurs as a matter of course without the youth even being asked to do so. It is unlikely that the charges against the youth will be dropped at the arraignment. Finally, counsel will be appointed to the youth if his family qualifies as indigent.

The bail hearing

After the youth says he is not delinquent, the judge will decide what, if any, bail is necessary to ensure the youth's return to court. The youth is entitled to representation by an attorney on the bail question. The sole issue in making the bail determination is whether or not the youth will appear in court.³³ For every youth, there is a presumption that he will be released to his parents or legal guardians without having to post bail.³⁴

In making the bail decision for a juvenile, the judge may look at a wide range of factors, including, among others, the nature and seriousness of the danger posed by release, the circumstances of the charges, whether the youth is involved with drugs or has a mental illness.³⁵

In addition to setting bail (and even if the judge decides not to impose a cash amount), the judge may impose conditions of release.³⁶ These conditions may be imposed without the consent of the youth or the youth's lawyer. Youth who are subject to such conditions are considered to be on “pretrial probation.”

31 Mass. R. Crim.P.7(c).


32 Mass.R.Crim.P.7(c)(2).

33 Mass. Gen. L. ch. 276, § 58. This handbook does not discuss dangerousness hearings, pursuant to Mass. Gen. L. ch. 276, §58A. For a discussion of these proceedings, see Hon. Jay Blitzman et al., Massachusetts Juvenile Court Bench Book, Mass. Continuing Legal Education, Vol. I at I.3.4 (2003).

34 See Barbara Fedders and Barbara Kaban, Do You Know Where the Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail (2006) at 6-7, <http://www.prisonpolicy.org/kidsbail/>.

35 Hon. Jay Blitzman et al., Massachusetts Juvenile Court Bench Book, Mass. Continuing Legal Education, Vol. I at I.3.3.1 (2003).


36 Mass. Gen. L. ch. 276, § 58.

 **Tip for families:** In some cases, parents and guardians may not want their child to be released to them. Before so advising the probation officer or the judge, be sure to consider the negative impact that detention may have on your child, particularly if he is very young, immature, developmentally disabled, or mentally ill. It is the job of your child's lawyer to persuade the judge to release your child without bail. The lawyer must be an advocate for your child's release (as long as that is what your child wants). If your child has substance abuse or mental health issues, inform your child's lawyer of these issues if you haven't already done so.

If the judge grants bail, the judge will set a dollar amount.³⁷ If the family pays this amount of money, the youth may return home.³⁸ However, he must appear in court at all future court dates related to his case, including trial.³⁹ The family will receive this money back at the conclusion of the case unless the youth fails to appear. If the family posts bail at the police station or DYS, there may be an additional \$40 fee (that is paid to the bail commissioner who comes to the police station or to DYS).⁴⁰ This \$40 fee for the bail commissioner is not refunded if bail money is ultimately returned.

Post-arraignment detention

For many youths appearing in the Juvenile Court for arraignment, the judge will set bail that the youth or family can post. Once posted, these youths will not be further detained.

 **Tip for families:** Even if your child needs services, it is better to help your child access them in the community. So, if you can avoid having your child held in a detention facility, you should. Even if you are upset with your child, try to help your child remain in the community pre-trial. Talk to your child's lawyer about your child's strengths and explain why your child should be able to come home with you. Describe how you will ensure that he comes to court when he has court dates. It is much easier to accomplish these necessary steps if your child is not detained. In appropriate cases, seeking voluntary services from DCF, if available, may be an alternative to detention. In other cases, applying for a CHINS petition may provide the court with an alternative to detention.


37 Mass. Gen. L. ch. 276, § 58.

38 Mass. Gen. L. ch. 276, § 58.

39 Mass. Gen. L. ch. 276, § 58.

40 Mass. Gen. L. ch. 262, § 24(a).

However, if, for whatever reason, the judge does not release the youth after arraignment, the youth probably will be sent to a DYS detention unit until the case has been completed.⁴¹ The youth will travel to the detention unit in a sheriff's van.

 **Tip for families:** When the youth arrives at the detention unit, he will be strip searched, as discussed further in the chapter entitled “Overview of Rights During Confinement.” It is also important to note that the youth may not bring medication into the detention unit, which is also discussed further in the chapter entitled “Overview of Rights During Confinement.”

At the time of arrival of a detained youth at DYS, DYS must do a preliminary clinical assessment to detect urgent psychiatric and medical needs, as well as suicidal ideation.⁴² DYS also must conduct a visual inspection for signs of trauma, recent surgery, abscesses, open wounds, needle punctures, jaundice and communicable diseases.⁴³

DYS also seeks to determine whether the youth has any current health problems (acute or chronic) or is currently being treated with medication which needs to be continued while in custody.⁴⁴ In addition, DYS offers all detained youths a screening for sexually transmitted diseases.⁴⁵

This assessment, called an “intake assessment,” is performed by DYS medical staff.⁴⁶ DYS conducts this assessment within 24 hours of a youth's arrival.⁴⁷

In addition, within 30 days of the youth's arrival at DYS, DYS conducts a medical evaluation.⁴⁸ Typically, this evaluation begins after the youth's 17th day in detention and will be completed by day 30 if the youth is still in detention at that time.⁴⁹

The length of stay in post-arraignment detention varies from a couple of days to many months. During this stay, DYS provides education,

41 Mass. Gen. L. ch. 119, § 68.

42 102 CMR 11.23(1)(a). DYS regulation 109 CMR 11.23(1)(a) requires DYS to provide detained youth with “minimal medical services,” but the U.S. Constitution likely requires a higher level of services than that standard.

43 102 CMR 11.23(1)(b).

44 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

45 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.


46 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

47 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

48 109 CMR 11.22(1) (for committed youths).

49 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

behavior management, medical services, recreational opportunities, a violence prevention curriculum, and substance abuse treatment.⁵⁰

 **Tip for families:** If your child is detained and released, encourage him to behave well in the community. Urge him to participate in school, stay out of fights, and abide by a reasonable curfew. This information will be provided to the court.

Juvenile Detention Alternative Initiative

In recent years, DYS has sought to reform the pre-trial detention system to include detention alternatives. In October 2006, the Annie E. Casey Foundation selected Massachusetts to participate in the Juvenile Detention Alternatives Initiative (JDAI), a nation-wide effort that focuses on reducing reliance on secure pre-trial detention.⁵¹ Worcester and Suffolk counties were designated as the two pilot sites.⁵² More recently, sites in Lowell and Lawrence have been added.

The goal of the program is to replace subjective decision-making criteria with objective criteria when youth enter the system, so that only high-risk youth are held before trial. Those youth who are less likely to commit another offense or flee would be released pre-trial.⁵³

Data indicates that the program has been successful. DYS reports a 30% drop in referrals to detention in the 3 years of JDAI: in 2006, there were 5600 youths in DYS detention programs and in 2009, there were less than 4000.⁵⁴ According to DYS, that decline exceeds both the decline in the juvenile crime rate and the decline in juvenile arraignments.⁵⁵

Placing a youth in DCF care or custody in post-arraignment detention

DYS and DCF have entered into an agreement to reduce the unnecessary use of DYS detention for youth in DCF care or custody.⁵⁶ To

50 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3.

51 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 10.

52 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 10.

53 For more information on JDAI, see <http://www.aecf.org/home/majorinitiatives/juvenilealternativesinitiative.aspx>.

54 DYS Commissioner Jane Tewksbury, Presentation at Juvenile Re-Entry Conference (Feb. 11, 2010).

55 DYS Commissioner Jane Tewksbury, Presentation at Juvenile Re-Entry Conference (Feb. 11, 2010).

56 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011), available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>.

do so, the agencies will work together to reduce the risk that DCF involved youths will be placed in DYS detention, unless they meet the criterion of the bail statute.⁵⁷ Additionally, DCF staff will not request or recommend to the court or probation department that a youth be placed in DYS secure detention while DCF is developing a treatment plan or while the youth is waiting for another DCF placement to become available.⁵⁸

The agreement also outlines procedures to occur if a youth in DCF care or custody is held in DYS detention. In such cases, the DCF social worker and the DYS clinical staff in the detention unit will be in contact to review the DCF service plan and discuss needed steps to maintain the youth in detention.⁵⁹ For each youth in DCF care or custody held in DYS detention for fifteen or more days, the agencies will conduct a case conference before the 30th day in detention.⁶⁰ If a youth is held in detention for 30 or more days, DCF and DYS Regional Directors will review the case, expedite case management, and seek resolution.⁶¹

Diversions

Diversions is the practice of not prosecuting a youth in exchange for his agreement that he will follow particular conditions. Diversions may occur either before or after a youth is arraigned. Currently, diversions programs are operated in Massachusetts through specific juvenile courts.⁶²

Diversions programs that occur before the youth is arraigned are worthwhile because they assure that the youth will not be detained, and most experts believe that being held pre-trial in a detention facility is not good for young people.⁶³ Youths are removed from their families, their schools, and their community-based service providers, including mental health service providers.⁶⁴ Removal from support systems add stress to

57 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011) , available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>, at 1.

58 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011) , available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>, at 1.

59 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011) , available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>, at 2-3.

60 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011) , available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>, at 3.

61 DYS & DCF, Memorandum of Understanding between DYS & DCF, Pre Trial Detention (Sept. 2011) , available at <http://www.masslegalservices.org/system/files/Memo%20of%20Understanding%20bn%20DYS%20%2526%20DCF%20re%20pre%20trial%20detentn%209%2021%2011.pdf>, at 3.


62 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 3.

63 See, e.g., Holman Barry and Jason Ziedenberg, Justice Policy Institute, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), http://www.justicepolicy.org/images/upload/06-11_Rep_DangersofDetention_jj.pdf.

64 See James Austin et al., Alternatives to the Secure Detention and Confinement of Juvenile Offenders (2005), <http://www.ncjrs.gov/pdffiles1/ojdp/208804.pdf>, at 3.

youths who may already have depression or other mental illness.⁶⁵ These burdens are often shouldered by young teens; the October 2006 DYS detention census shows that 22% of all DYS detainees were age 14 or under.⁶⁶

Youths who are held before trial tend to have worse outcomes on their cases than youths who are released home.⁶⁷ Youths who are detained are more likely than those who are not to be placed out of their homes, when controlling for offense, prior history, and other factors.⁶⁸ Youths held in detention are more likely to recidivate than youths who are not.⁶⁹ Finally, in 2009, one in five youths who were sent to DYS for pre-trial detention were ultimately committed to DYS.⁷⁰ This means that a youth may be detained for alleged offenses that the Commonwealth ultimately cannot prove -- beyond a reasonable doubt -- that he committed. These findings are particularly troubling since youths of color are overrepresented in Massachusetts detention units.⁷¹

 **Tip for families:** There is another reason to push for pre-arraignment diversion: once your child is arraigned, that fact will appear on his juvenile record. Pre-arraignment diversion avoids any entry on his record. Additionally, while the youth is not prosecuted if he participates in a diversion program, in some cases, diversion programs may require that the youth admit to the crime before entering the program.

Diversion agreements may involve activities such as supervision and monitoring, school attendance, curfew, community service, restitution, and mental health or substance abuse counseling.

Diversion agreements may impose substantial obligations. For example, diversion participants may have to attend weekly programs over a period of months where, among other things, they may be educated about their unlawful activities.

65 Holman Barry and Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), http://www.justicepolicy.org/images/upload/06-11_Rep_DangersofDetention_ji.pdf.

66 Juvenile Justice Advisory Committee of the Executive Office of Public Safety, *Annual Report* (2006), http://www.mass.gov/Eeops/docs/programs/fjj/2006_jjac_annual_report.pdf, at 22.


67 See, e.g., Youth Transition Funders Group, *A Blueprint for Juvenile Justice Reform*, 2nd ed. (2006), http://www.ytfg.org/documents/JEHT_SecondEdition.pdf.

68 Bill Rust, *Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland, and Sacramento*, *Advocasey*, 1(3) (1999), 1–16.

69 Holman Barry and Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), http://www.justicepolicy.org/images/upload/06-11_Rep_DangersofDetention_ji.pdf, at 4.

70 Executive Office of Health and Human Services, *Annual Population Analysis – Detention Admissions: Analysis of DYS detentions from 2000 to 2009*, Figure 1, <http://www.mass.gov/eohhs>; Executive Office of Health and Human Services web site, *Annual Population Analysis – New Commitments: New commitments to the Department of Youth Services from 2000 to 2009*, Figure 3, <http://www.mass.gov/eohhs>.

71 Citizens for Juvenile Justice, *Detention Fact Sheet* (Nov. 2006), http://www.cfjj.org/Pdf/detention%20fact%20sheet%2011_29_06%20v.2.pdf.

 **Tip for families:** Investigate a diversion proposal carefully before agreeing to participate. There are no laws or regulations in Massachusetts that set criteria for diversion, so diversion practices may vary from one part of the state to another. Ask whether your child must admit to the crime before being accepted. If he must, talk to your child's lawyer about the consequences of such an admission.

Recognizing these and other negative effects of detention, and in light of the large numbers of youths detained each year in Massachusetts, DYS has begun to work to decrease the use of detention for youth who do not pose a high risk to the community. Also, the Detention Diversion Advocacy Program (DDAP), which operates out of the Dorchester Juvenile Court, works to decrease the use of detention by offering intensive case management services to high-risk youths.⁷²

Preparation for trial

Much work is done between the bail hearing and the end of a youth's case. This work includes the discovery process, investigation, motions, trial or plea bargain and disposition, preparation for possible trial, planning and advocacy. The youth and his family or legal guardian should be involved in all aspects of the case. Part of the lawyer's job is to help the youth and his family participate fully in these activities.

Predisposition mental health reviews

There are typically two sources for a predisposition mental health review of an arrested youth: a juvenile court clinic evaluation or an independent clinical evaluation.

Juvenile court clinic evaluation

The court may refer the youth for evaluation to a juvenile court clinic. (The court also is permitted to ask DYS or a Department of Mental Health facility to conduct such an evaluation, but a court clinic evaluation is more common.) This evaluation is called a 68A evaluation.⁷³ It is not confidential and any information learned may be disclosed to the court.⁷⁴ A juvenile court clinic evaluation may be conducted by a psychologist, psychiatrist, or social worker.


⁷² Described at <http://www.rfkchildren.org> (under "programs").

⁷³ Mass. Gen. L. ch. 119, § 68A.

⁷⁴ Mass. Gen. L. ch. 119, § 68A.

In addition to conducting the types of evaluations described above, some court clinics also may provide limited short term individual and/or group treatment to youths before the juvenile court, as well as consultations to other providers working with the youths, in an effort to avoid further court involvement.⁷⁵ Such services include juvenile versions of “Anger Management” or “Life Skills” groups, or involve short-term interventions while community referrals to mental health services are made. Whether and to what extent these services are available varies widely from courthouse to courthouse and is based upon resources, siting of trainees, and preferences of First Justices.⁷⁶

There is a presumption that treatment by court clinicians is subject to the usual rules of confidentiality unless the youth and the youth’s parent or legal guardian is informed otherwise as part of informed consent.⁷⁷ However, if participation in treatment is a condition of probation, the probation department will want to know if a youth is showing up for treatment sessions. If a court clinician intends to disclose any specific information from treatment to probation or to the court, this fact must be explained to the youth when providing informed consent prior to beginning treatment. Youth and parents or legal guardians also would be informed of the typical exceptions to confidentiality (such as the clinician’s obligations as a mandated reporter of abuse and neglect) prior to beginning treatment. In addition, treatment records are kept separately from any forensic evaluation records.⁷⁸

 **Tip for families:** Prior to engaging in treatment at a court clinic, it is important for your child to consult with his lawyer about the implications of that decision. Also, it is important that you and your child pay careful attention to the information provided during the informed consent process and address any questions or concerns you may have before providing consent.

Independent clinical evaluation

Whether or not the court seeks an evaluation, a youth’s defense lawyer may seek funds from the court to have the youth evaluated by

75 See, e.g., Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System, Program Description: The Boston Juvenile Court Clinic (2006 draft), <http://www.ncmhji.com/Blueprint/programs/BostonJuv.shtml>.

76 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Jan. 2007).

77 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Jan. 2007).

78 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Jan. 2007).

independent clinician.⁷⁹

Reasons for evaluations

Evaluations may be pursued for various reasons. Typical reasons for an evaluation include:


- to determine if a youth is competent to stand trial;
- to determine if a youth is criminally responsible (a youth might have a mental illness that would support an insanity defense and a finding of not delinquent by reason of mental illness);
- to aid in sentencing/disposition.

In addition to these basic types of evaluation, evaluations may include specialized assessments that focus on substance abuse, sex offenders, violence risk or fire-setting behavior.

Evaluations often include thoughtful recommendations for appropriate services and thus may be extremely useful even after the court proceeding.

Before pursuing an evaluation


There are risks in pursuing a court clinic evaluation or an independent evaluation that will be admitted in court. For example, a youth could admit involvement in the alleged delinquent act or could discuss other acts that he then could be charged with.

 **Tip for families:** For the above reason, it is essential to talk with your child's lawyer before your child submits to such evaluations. Remember, nothing said during a court clinic evaluation is confidential!

If an evaluation is pursued, parents and legal guardians generally will be asked to participate in the process. Parents and legal guardians should exercise caution before disclosing certain information during a court clinic evaluation (for example, an issue that could expose your child to criminal liability, any history of your child acting out sexually). Before disclosing such information to an evaluator, it would be important to consult with the youth's lawyer. Similarly, while it likely will be helpful to inform the evaluator of developmental delays, cognitive/learning issues,

79 Committee for Public Counsel Services Performance Guidelines Governing the Representation of Indigent Juveniles in Criminal Cases, II. J.2.5e).

mental health hospitalizations, diagnoses, and medications, these subjects should first be raised with the youth's lawyer. Moreover, if your child has been in counseling, you should discuss this issue with your child's lawyer.

 **Tip for families:** It is risky to discuss your child's mental health problems with anyone else in the court proceeding (such as the probation officer or judge) without first talking about it with your child's lawyer. In addition, when speaking with an evaluator, parents should answer truthfully, but are not obligated to respond to questions and can choose not to answer a question or questions

CHAPTER 6:

TRIAL, ADJUDICATION, AND DISPOSITION

Where the case will be heard	6.2
Youthful offender cases	6.2
Trial	6.2
Determination that a youth is delinquent or a youthful offender	6.3
Tendering a plea	6.3
Sentencing/disposition	6.4
The lawyer’s role during the sentencing/ disposition phase	6.4
Pursuing services for youths with mental health or substance abuse treatment needs	6.5
Pursuing community-based services for youth with mental health treatment needs.....	6.5
Juvenile record	6.6
Probation.....	6.7
Probation surrender	6.8
Table of potential dispositions.....	6.9

TRIAL, ADJUDICATION, AND DISPOSITION

Where the case will be heard

A youth's case most likely will be heard in juvenile court. However, there is one situation that would cause a youth's case to be tried in adult court:

- a youth is accused of murder; and
- a youth is 14 or older.¹

Youthful offender cases

While every other juvenile case is heard in juvenile court, there are circumstances where a juvenile can receive an adult prison sentence. These are called youthful offender cases.² Cases that are not youthful offender cases are called juvenile delinquent cases. To be tried as a youthful offender, a youth must be:

- age 14 or older and accused of a crime involving the threat or infliction of serious bodily harm; or
- age 14 or older and charged with a gun case; or
- age 14 or older, previously committed to DYS and charged with a felony;³ and
- the District Attorney has secured a youthful offender indictment from the grand jury.

Youthful offenders may be committed to DYS to age 21, may receive any sentence to which an adult may be sentenced for the same offense, or may be committed to DYS to age 21 with concurrent adult probation and/or an adult suspended sentence.

Trial

In juvenile delinquency court cases, the general public is not permitted in the courtroom during potential proceedings and a youth's trial.⁴ The youth has the right to be considered innocent until proven delinquent (akin to guilty in the adult system). The youth also has the right, under state law, to trial by a jury of six except in youthful offender cases, in

1 Mass. Gen. L. ch. 119, §§ 74, 72B.

2 Mass. Gen. L. ch. 119, § 58.

3 Mass. Gen. L. ch. 119, §§ 52, 58.

4 Mass. Gen. L. ch. 119, § 65.

which the youth has the right to a jury of twelve.⁵ This means that he can choose whether he wants a group of six community members to decide the case or whether he would prefer that the judge hear the case and make the decision.

If the case goes to trial and the allegations are proved beyond a reasonable doubt, the judge will enter a finding that the youth is “delinquent” (“youthful offender in these kinds of cases”). If the allegations are not proven beyond a reasonable double, the judge will enter a finding of “not delinquent” (or “not a youthful offender”) and the youth will be released.

After the trial, the case goes to the disposition phase, discussed below.

Determination that a youth is delinquent or a youthful offender

A delinquency or youthful offender determination, whether the result of a trial or plea bargain, will be part of the youth’s juvenile record.⁶ This record, in many cases, will follow him for the rest of his life.

Despite popular belief, juvenile records in Massachusetts are not automatically “sealed” or “expunged” when a juvenile reaches adulthood.⁷ Although in Massachusetts, there is no law providing for juvenile records to be expunged, juvenile records can be sealed three years after the completion of the sentence in the matter to be sealed.⁸ If they are sealed, the record of the delinquency may be reported only to certain individuals.⁹ For example, judges hearing subsequent criminal cases against a youth may review sealed juvenile records when deciding upon a sentence.¹⁰

Tendering a plea

Instead of going to trial, a youth may “tender a plea.” This means that he requests the court to change his initial plea from not delinquent (or not a youthful offender) and asks the judge to accept the youth’s

⁵ Mass. Gen. L. ch. 119, § 56(e).

⁶ “Record” is a term which is often used in a way that is confusing to parents. Some people consider the print out that is created when a child is arraigned as a record, but when employers or court officials are talking about whether someone has a record, they’re usually talking about a record of adjudication or conviction. When we use the term “juvenile record” in this booklet, we are referring to a record of adjudication or conviction.

⁷ Children’s Law Center of Massachusetts, Inc., Sealing Juvenile Records, http://www.clcm.org/community_education.htm.

⁸ Mass. Gen. L. ch. 276, § 100B. For further information, see Children’s Law Center of Massachusetts, Inc., Sealing Juvenile Records, http://www.clcm.org/community_education.htm.

⁹ Mass. Gen. L. ch. 276, § 100B.

¹⁰ Mass. Gen. L. ch. 276, § 100B.

sentencing recommendation. In this context, there are two pleas in Massachusetts: delinquent (youthful offender) and admission to sufficient facts.¹¹ (This admission is not actually an admission, but an agreement not to contest the facts before the judge and that those facts are sufficient to find the youth delinquent.) When a youth decides to change his plea from not delinquent (or not a youthful offender) to delinquent (or youthful offender), he gives up the right to contest the charges or have a jury trial. The case then moves straight to the disposition phase. The plea tender may be agreed to by the prosecutor, but need not be.

Sentencing/disposition

After a trial or plea tender, the judge will determine the sentence/disposition -- the final outcome of a case in the juvenile justice system. In this phase, the judge determines whether the youth will spend time in confinement or remain in the community.


The possible dispositions that a judge can order are listed in a table at the end of this section in order of increasing restrictiveness.

In Massachusetts, if the judge decides that the youth will be committed to DYS, he does not determine the length of the commitment. Rather, the length of commitment to DYS is set by statute - to age 18 in delinquency cases and to age 21 in youthful offender cases. DYS determines how long the child will remain in a locked facility, a staff secure facility, and if and when he will be released with conditions. (The processes by which those decisions are made are discussed in later sections of this book.)

The lawyer's role during the sentencing/disposition phase

Generally, the prosecutor, the probation officer and the youth's lawyer will all make recommendations to the judge regarding the disposition. It is the job of the youth's lawyer to present the youth's position.


¹¹ Mass. Gen. L. ch. 119, § 55B.

 **Tip for families:** It is important that you provide information to your child’s defense lawyer so that the lawyer may prepare for the disposition phase. In this phase, your child’s lawyer will seek to provide the court with a full picture of your child and his needs. Give the lawyer relevant information that you have. You also should give the lawyer contact information for and information from individuals who have worked with your child, such as a school counselor, pastor or minister, pediatrician, or therapist. In some cases, the judge may order a youth to undergo a “68A” psychological or psychiatric evaluation in order to help the judge decide the disposition. Mass. Gen. L. ch. 119, § 68A. If you think such an evaluation would be worthwhile, talk to your child’s lawyer about this issue as well.

Pursuing services for youths with mental health or substance abuse treatment needs

For youths with mental health or substance abuse treatment needs, the sentencing phase is particularly critical. It is a key point at which a youth can try to access appropriate mental health and substance abuse services.

In some cases, the judge may order the juvenile to undergo a psychological or psychiatric evaluation to help the judge decide upon the disposition.¹² For further discussion of 68A evaluations, see the chapter entitled “After the Arrest.”

 **Tip for families:** If your child has mental health or substance abuse treatment needs, it is important for you and your child’s lawyer to think about how to achieve a disposition that will allow for these needs to be addressed. Once you have done so, your child’s lawyer may want to try to educate the judge about the benefits of a certain disposition.


Pursuing community-based services for youth with mental health treatment needs

There is a growing consensus among mental health clinicians that community and home-based services that wrap around the youth are usually more effective than facility-based treatment in addressing mental

¹² Mass. Gen. L. ch. 119, § 68A.

health problems and rehabilitating youth.¹³ Such services include Multi-Systemic Therapy (MST), Multi-Dimensional Treatment Foster Care, Functional Family Therapy, and other wrap around services.¹⁴

This philosophy guides all aspects of the new children’s mental health system in Massachusetts for MassHealth recipients, as developed as a result of the *Rosie D.* federal class action lawsuit.¹⁵ The lawsuit resulted in the expansion of Medicaid services for youth to include community-based services such as Mobile Crisis Intervention, In-Home Behavioral Services, Family Support and Training, Therapeutic Mentoring, In-Home Therapy, and Crisis Stabilization.

 **Tip for families:** Ask your child’s lawyer to evaluate the availability and appropriateness of a disposition that allows for the implementation of home-based mental health services. If your child has Medicaid, ask the lawyer to evaluate what services are available as a result of the implementation of the *Rosie D.* settlement agreement.

Juvenile record

By definition, most juvenile proceedings are considered civil, not criminal. However, often the impact of a juvenile record is the same as an adult criminal record.

For example, juveniles found delinquent of certain sex crimes are required to register with the sex offender registry,¹⁶ and face the possibility of commitment as sexually dangerous persons.¹⁷ Many delinquencies will affect one’s ability to get or keep a driver’s license. A juvenile record has implications for individuals seeking to join the military. A juvenile record

13 See, e.g., Youth Transition Funders Group, *A Blueprint for Juvenile Justice Reform*, 2nd ed. (2006), http://www.ytfg.org/documents/JEHT_SecondEdition.pdf; Eric Trupin, *The Estimated Effect on Criminal Recidivism for Different Types of Programs for Youth and Juvenile Offenders*, distributed at the National GAINS Center Co-Occurring Disorders and Justice Center teleconference (Oct. 11, 2005); Bazelon Center for Mental Health Law, *The Detrimental Effects of Group Placements/Services for Youth with Behavioral Health Problems*, <http://www.bazelon.org/pdf/Deviant-Peer-Influences-Fact-Sheet.pdf>; J. Paterson Rae, TASC, *Fact Sheet: Treatment Alternatives to Incarceration for Juvenile Offenders With Psychiatric and Emotional Disabilities: Effective Services and Potential Legal Strategies Training and Advocacy Support Center* (Oct. 2007), <http://www.rosied.org/Content/Documents/Document.ashx?DocId=56913>; Leslie Kaufman, “A Home Remedy for Juvenile Offenders,” *The New York Times* (Feb. 20, 2008) (describing a new program in New York, the Juvenile Justice Initiative, that maintains medium-risk youth otherwise destined for institutionalization in the juvenile justice system in their own homes with intensive, at home therapy); Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 *The Future of Children* 143, 152-57 (2008)


14 Youth Law Center, *Medicaid for Youth in the Juvenile Justice System* (Aug. 2006) at 4 (on file with MHLAC); see also Eric Trupin, *The Estimated Effect on Criminal Recidivism for Different Types of Programs for Youth and Juvenile Offenders*, GAINS Teleconference (Oct. 11, 2005) (on file with MHLAC).

15 See *The Wraparound Planning Process: A New Opportunity for Families* (May 2009), <http://www.rosied.org/Content/Documents/Document.ashx?DocId=56022>.

16 Mass. Gen. L. ch. 6, § 178C.

17 Mass. Gen. L. ch. 123A, § 1.

also may have immigration consequences. And, while some employers will not see a juvenile record, many employers are entitled to see it.¹⁸ Further, a juvenile record may affect a youth in a wide range of other areas, from college admission to obtaining a mortgage to pursuing certain professions.

 **Tip for families:** Therefore, it's critical that you and your child discuss with your child's lawyer, while preparing the case, the effect of the outcome on the child's juvenile record.

Probation

A youth's disposition (final outcome of the case) could be probation, a court-ordered status of supervision in the community.¹⁹ Probation is the most common disposition for court-involved youth.

If a youth is placed on probation, the probation officer will complete a report, based on interviews with the youth, as well as with his parent or legal guardian.²⁰ This report includes a detailed profile of the youth, including a risk/need classification that is then used to develop supervision plans.²¹

The risk/need assessment measures nine "risk categories" including: prior delinquency record, prior periods of probation, age at first offense, school discipline problems within the past year, changes in residence within the past year, response to caretaker discipline, peer relationships, substance use and attitude.²²

If a youth is put on probation and not committed, there will be conditions of probation.²³ Examples of such conditions include not getting re-arrested, going to school (or work) daily and on time, obeying residential rules, reporting to a probation officer or program, paying money (if the youth stole or damaged property) and following the conditions of a curfew.

If the youth makes it through his probation period without violating

18 See Youth Advocacy Department, Consequences of Court Involvement, http://www.youthadvocacydepartment.org/parents/ma_courts.htm#process.

19 *Commonwealth v. Sheridan*, 51 Mass. App. Ct. 74, 76 (2001) (citing *Commonwealth v. Durling*, 407 Mass. 108, 111 (1990)); Mass. Gen. L. ch. 119, § 58 (authorizing probation for juvenile offenders).


20 Mass. Gen. L. ch. 119, § 57.

21 National Center for Juvenile Justice State Profiles: Massachusetts, Probation Supervision (Jan. 13, 2006), <http://www.ncj.org/stateprofiles/profiles/MA06.asp>.

22 Office of the Commissioner of Probation, Trial Court of Massachusetts, "Juvenile Risk/Need Offender Assessment" form.

23 For citations and a discussion of conditions of probation, see Juvenile Defense Network Youth Advocacy Project/CPCS, "An Overview of the Law of Probation Surrenders" (May 2006).


any probation rules, his case will be closed.

 **Tip for families:** If any of your child’s proposed conditions of probation would be difficult to satisfy, you should tell your child’s lawyer, since a violation of probation conditions is a frequent cause of commitment. For example, if a proposed condition is regular school attendance and your child has a history of truancy, it is important to tell the lawyer so that that condition can be modified or other conditions can be substituted for it, if possible.

Probation surrender

If the youth’s probation officer thinks the youth has violated a condition of probation, the officer will send the youth a letter called a “surrender notice” requiring him to come to court for a hearing.²⁴

When the youth arrives at court, he will be appointed a lawyer.²⁵ Depending on the court, this may or may not be the same lawyer that represented the youth on the charge that lead to probation.

 **Tip for families:** If your child liked his original lawyer and wants him or her reappointed for this hearing, he should: 1) let the original lawyer know about the surrender notice and the hearing date; and 2) ask the judge to have the same lawyer reappointed -- citing trust, communication, and knowledge of the child’s unique circumstances.

After the hearing, if the judge finds that the youth has violated a condition of probation, the judge may give him more probation time, make his probation rules more strict, otherwise change his conditions, or commit him to DYS.²⁶

²⁴ *Morrissey v. Brewer*, 408 U.S. 471, 485-489 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); see also *Commonwealth v. Durling*, 407 Mass. 108 (1990); *Commonwealth v. Maggio*, 414 Mass. 193, 196 (1993), (citing *Morrissey and Gagnon*).

²⁵ District Court Rules for Probation Violation Proceedings, R. 5(a); see also *Commonwealth v. Faulkner*, 418 Mass. 352 (1994) (probationer at probation violation hearing has right to counsel if revocation might result in imprisonment).

²⁶ See *Commonwealth v. Durling*, 407 Mass. at 111-112; see also Proposed Juvenile Court Rules for Violation of Probation Proceedings R. 7 (d) (providing for the following dispositions: (a) continuance of probation, (b) termination, (c) modification, (d) revocation).

Table of potential dispositions

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
Adjudicated not delinquent	The court has found that the youth has not committed or is not responsible for alleged act. The youth will face no punishment for the charge.	
Dismissed with prejudice or dismissed without prejudice	The prosecutor and the court have agreed not to proceed in the case. When a case is dismissed with prejudice, the youth may not be charged with the same crime at some later date.	This does not mean that the youth will not face any punishment. When a case is dismissed without prejudice, the prosecutor may charge the youth for the same crime in the future (usually if new evidence is acquired or if a reluctant witness decides to testify).

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
<p>Pretrial probation, Mass. Gen. ch. 276, § 87</p>	<p>The case is continued for some period, usually with the agreement that if the youth behaves well and follows conditions of probation set by the judge, the case will be dismissed.</p>	<p>This doesn't mean there won't be a trial -- the youth hasn't given up the right to a trial. So, if the youth violates his agreement, the case may be returned to the trial list.</p>
<p>Continued without a finding ("CWOFF"), Mass. Gen. ch. 119, § 58</p>	<p>This typically means that a youth has given up his right to a trial. A youth also can be placed on CWOFF after a bench or jury trial but before a finding of delinquency or even after a jury's finding of delinquency (where statutorily permitted).</p> <p>A youth on CWOFF is placed on probation. If he successfully completes probation, his case will be dismissed. The youth also may have to pay a victim witness fee and a fee for probation services. Some of these fees may be waived if the youth completes community service hours. If the youth violates the terms of his probation, he may face a probation surrender and can be sent to DYS.</p> <p>A youth who successfully completes a CWOFF does not technically have a juvenile record, because the case was dismissed, but does have a record of contact with juvenile court.</p>	<p>This does not mean that the youth is completely free – he must comply with the terms of his probation. He may have to attend school, meet a curfew, or get a job, for example. Also, because a CWOFF involves an admission, it could have potential implications for military service or immigration status (although a CWOFF doesn't result in a record of conviction/ adjudication).</p>

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
<p>Delinquent probation, Mass. Gen. ch. 119, § 58B</p>	<p>The youth has admitted that there are sufficient facts to prove him to be delinquent, and has been found delinquent (guilty) and a judge may sentence him to probation. If he violates the terms of his probation, there will be a probation surrender hearing and the judge can change the disposition. The youth also may be required to pay a victim witness fee, as well as a fee for probation services. Some of these fees may be satisfied if the youth completes community service hours.</p>	<p>This does not mean that the youth is completely free – he must comply with the terms of his probation. He may have to attend school, meet a curfew or get a job, for example. Also, because this outcome is the result of an adjudication, it results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.</p>
<p>Delinquent with a suspended commitment to DYS, Mass. Gen. ch. 119, § 58</p>	<p>The youth is found delinquent and is committed to DYS, but, instead of being placed in DYS custody, the youth is placed on probation. If the youth doesn't follow the probation condition, he may be committed to DYS. The youth also may be required to pay a victim witness fee, as well as a fee for probation services. Some of these fees may be satisfied if the youth completes community service hours.</p>	<p>This does not mean that the youth is completely free – he must comply with the terms of his probation and, if he does not, he may be committed to DYS, have the length of his probation extended, or have his conditions modified. Also, because this outcome is the result of an adjudication, it results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.</p>

DISPOSITION	WHAT IT MEANS	WHAT IT DOESN'T MEAN
<p>Committed to the Department of Youth Services, but not adjudicated a Youthful Offender, Mass. Gen. ch. 119, § 58.</p>	<p>The youth will be placed in DYS custody until his 18th birthday. The youth will spend between 30 and 45 days in a DYS residential facility for assessment. After that point, he may remain confined by DYS for treatment. At some point, he may be able to live with you, while remaining under DYS supervision. Typically, all fees and fines are waived if the youth is committed.</p>	<p>This does not mean that the youth will necessarily live away from home until he is 18. Also, this outcome results in a juvenile record that may have implications in a number of areas, including military service, immigration status, employment, and housing.</p>
<p>Adjudicated a Youthful Offender, Mass. Gen. ch. 119, § 58</p>	<p>The youth will be committed to DYS custody until age 21, or will serve an adult sentence, and/or will be placed on juvenile or adult probation. The youth could spend time in a DYS facility and also have adult probation (which, if violated, would result in the youth being transferred to an adult facility). Typically, all fees and fines are waived if the youth is committed.</p>	<p>This does not mean that the youth will necessarily be placed in adult prison before age 21, although it is possible. In any event, a youth cannot be placed in adult prison until he turns 17. Also, this outcome results in a record (although it is unclear if it is considered a juvenile record or an adult record) that may have implications in a number of areas, including military service, immigration status, employment, and housing.</p>

CHAPTER 7:

COMMITMENT AND ASSESSMENT

Commitment to DYS	7.2
Placement upon commitment	7.2
Assessments of committed youth	7.3
Intake screening	7.3
Medical evaluation.....	7.3
Full assessment.....	7.4
Providing records to DYS	7.6

COMMITMENT AND ASSESSMENT


Commitment to DYS

One possible disposition for the youth is commitment to DYS. Commitment to DYS means that the court has ordered the youth to be accountable to DYS until a certain age. A youth charged as a delinquent is committed to DYS until age 18.¹ A youth charged as a youthful offender, defined below, is committed until age 21.²

Commitment to DYS may involve DYS taking physical custody of the youth for all or part of the length of the commitment, but DYS never assumes legal custody.³

Typically, committed youths reside at a secure program for a period determined by DYS and then live in a residential or community program on a grant of conditional liberty, discussed in the chapter of this book entitled “Grant of Conditional Liberty.”

During commitment to DYS, the youth’s parent or legal guardian maintains legal custody over the youth (unless a parent cannot be found and no legal guardian has been appointed).⁴

 **Tip for families:** Commitment to DYS is different from commitment of a person with mental illness to a mental health facility. Mental health admission and commitment are discussed briefly in the chapter of this book entitled “Overview of Rights During Confinement.” Commitment to DYS should also be distinguished from being placed in the custody of the Department of Children and Families (DCF), which some people refer to as “commitment to DCF,” pursuant to Massachusetts General Laws chapter 19, section 26.

Placement upon commitment

After the youth is committed to DYS custody, he will travel in a sheriff’s van to a DYS facility. DYS will then place the youth in a DYS Detention facility to await the next available bed in an assessment unit.⁵

1 Mass. Gen. L. ch. 119, § 58.


2 Mass. Gen. L. ch. 119, § 58.

3 See Mass. Gen. L. ch. 120, § 12.

4 Mass. Gen. L. ch. 120, § 23.

5 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25.

Once the youth is placed in an assessment unit, he will remain there until his staffing (discussed below).

 **Tip for families:** When the youth arrives at the assessment unit, he will be strip searched, as discussed further in the chapter entitled “Overview of Rights During Confinement.” It is also important to note that the youth may not bring medication into the assessment unit, which is also discussed further in the chapter entitled “Overview of Rights During Confinement.”

Within two business days of commitment, the DYS District Manager must assign the youth a DYS caseworker.⁶ The caseworker must contact a committed youth by telephone within two business days of case assignment.⁷ The caseworker must meet with the youth face to face within three business days of commitment.⁸ At the face to face meeting, the caseworker will explain the commitment process and the criteria for discharge.

This assignment is important as the caseworker will work with the youth through the assessment period, the staffing meeting, and classification process.

Assessments of committed youth

After commitment, DYS will conduct a series of assessments.

Intake screening

DYS performs an intake screening of all committed youths as DYS does of all detained youths.⁹

Medical evaluation

In addition, if the committed youth has not had a complete medical evaluation (because he had not remained in detention for sufficient time for such evaluation to be completed), he will have that evaluation on the assessment unit. DYS regulation requires that this evaluation occur

6 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 9.

7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25, 44.

8 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 12, 25, 44.

9 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

within 30 days of commitment to DYS.¹⁰ However, DYS will complete the evaluation within 30 continuous days of confinement to DYS (so a youth who has been detained prior to commitment may have the evaluation completed prior to the regulatory deadline).¹¹

Full assessment

DYS must evaluate each committed youth when he enters DYS custody in order to determine what services the youth needs.¹² DYS requires that the assessment be completed within 30 days of a youth's placement on an assessment unit.¹³

As part of the evaluation, the assessment unit clinician conducts a full assessment of the committed youth once on the assessment unit.¹⁴ The assessment covers a range of topics including: medical, dental, psychiatric, behavioral, substance abuse and educational history; family involvement; prior juvenile record; and review of risk factors relating to offending.¹⁵

As part of this assessment, the assessment unit clinician conducts a full case history including home visits, meetings with the family, information gathering on trauma history, early neurological development, and educational testing to perform a risk-needs analysis for, among other areas, substance abuse, psychological function, and offense behavior.¹⁶

The assessment unit clinician also administers an array of standard assessment tools including:

- a mental health assessment called a Massachusetts Youth Screening Instrument, Second Version (MAYSI-2);
- a substance/alcohol abuse assessment called the Global Appraisal of Individual Needs - Short Screener (GAIN-SS) and, if needed, the Global Appraisal of Individual Needs - CORE (GAIN-CORE);
- a bio-psycho-social inventory; and
- the Child and Adolescent Needs and Strengths tool

10 109 CMR 11.22(1).

11 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

12 Mass. Gen. L. ch. 120, § 5(a)-(c) (the statutory provision terms this evaluation an "examination").

13 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

14 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

15 Mass. Gen. L. ch. 119, §§ 68A, 68C, 69; Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

16 DYS & EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 2.

(CANS).¹⁷

The GAIN-SS is an indicator of whether substance abuse is a risk factor and whether the youth needs a more in-depth assessment.¹⁸ The GAINS-CORE is an evidence-based diagnostic tool to suggest what level of treatment is needed.¹⁹ These tools help DYS determine into which substance abuse service track (treatment or prevention) to place a youth.²⁰

The CANS tool measures both a youth's medical and physical needs and his and his family or caretaker's strengths, such as outlook, talents, interests and capabilities, in order to determine need for services.²¹

In addition to the assessments performed by the DYS clinician, the youth's DYS caseworker participates in the diagnostic assessment. The caseworker:

- conducts the first home investigation;
- administers a risk-needs assessment called the Youth Level of Services Inventory/Case Management Inventory (YLS/CMI) for all youth.²²

The YLS/CMI seeks to identify "risk factors" and "needs".²³ The caseworker uses the results from the YLS/CMI to coordinate appropriate community services via the youth's service delivery plan.²⁴ The caseworker also reviews the assessment findings, including the CANS assessment.²⁵

The assessments are part of the case history that is developed for each youth during the assessment process. The case history is a document with multiple sections on various aspects of the youth's history, compiling the above topics of examination.

17 DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006); DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007); DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), A.1 (re GAINS-SS).

18 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

19 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

20 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

21 DYS & EOHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 2; Center for Public Representation, Step 2: Mental Health Evaluation, <http://www.rosied.org/Default.aspx?pageId=84576>.

22 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 12, 25-26. The DYS caseworker will subsequently re-administer the YLS/CMI for all youth with an initial placement in a program for six months or longer. DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 12,

23 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 34.


24 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 12, 25-26.

25 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25.

The caseworker is responsible for compiling the case history. This task is done by conducting:

- interviews with the youth, his family/guardian(s), and/or other involved parties;
- the in-home investigation; and
- a review of past court, educational, and placement records.²⁶

The caseworker compiles the case history and forwards it to the Assessment Unit within three weeks of the date of commitment.²⁷ The caseworker portion of the case history is then incorporated into the final case history draft presented at the time of the initial staffing.²⁸ The case history is used to develop the youth's service delivery plan.²⁹

 **Tip for families:** Encourage your child to behave well on the assessment unit and to participate in the assessment process. Your child's relationship with his DYS treatment team begins during assessment and should be a productive one that produces a helpful treatment plan. However, if your child's lawyer is appealing your child's case in court, your child should not discuss the facts surrounding the incident in the assessment process. If you or your child has questions, contact your child's lawyer.

As part of the initial assessment, DYS should interview a youth's parents or legal guardian.

Providing records to DYS

During the assessment period, parents and legal guardians should work with the youth's lawyer to make sure DYS receives copies of the youth's school records, mental and physical health records, and any other information that would be useful to determine the youth's needs.³⁰


²⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25. Case histories are to be updated every six months. DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25.


²⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 9, 12.


²⁸ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 12.

²⁹ See 109 CMR 11.22(1).

³⁰ 14B Mass. Practice Series, Summary of Basic Law, § 14.75 (3rd ed.).

 **Tip for families:** If your child receives special education services, make sure DYS is aware of that fact during the assessment process. Provide DYS with copies of your child's Individualized Education Program (IEP). If your child has an IEP, he has the right to receive special education services while in DYS custody. (If your child has not yet been found eligible for special education services, but you believe he may be eligible, ask the local school district or Special Education in Institutional Settings (SEIS) (discussed later in this book) to arrange for a special education evaluation (if he hasn't had an evaluation) or a team meeting (if he already has had an evaluation). All DYS facilities should have special education teachers. Insist that DYS place your child in a program where his educational needs will be met. Additionally, keep in mind that your child's school district retains responsibility to implement the whole IEP. (For more about the educational rights of children with special needs and the responsibilities of various entities to deliver special educational services to DYS involved youth, see the section entitled "Special Education" below.)

 **Tip for families:** If your child's lawyer arranged for a clinical evaluation during the course of representation, discuss with the lawyer whether that evaluation should be shared with DYS.


 **Tip for families:** You should keep a copy of the records that you provide to DYS. You may want to reference them during your child's commitment or provide additional copies to DYS or program staff.


The reports of evaluations completed by the juvenile court clinic are court-ordered and therefore belong to the juvenile court.³¹ These reports only may be released upon the order of a juvenile court judge although lawyers representing children typically receive copies for purposes of the court case.³² In addition, if a youth is committed to DYS, the clinical portions of the report are released to DYS for assessment and planning purposes, consistent with an agreement between the juvenile courts and DYS, so that DYS may fulfill its statutory obligations to assess and care for


³¹ Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007).

³² Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007).


its clients.³³

 **Tip for families:** You may request to speak with the court clinician about the substance of the report. If you believe that the report might be helpful to you, your child's doctor or another person, you may ask your child's lawyer to request that the judge order its release to a specified party. The court clinician also can recommend the report's release in the report itself, so if you are part of the evaluation (or even if you are not), you can ask the court clinician to consider including that recommendation, particularly if it would be helpful for your child's clinical care, or other purpose. This tip is based upon information contained in correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007.)

 **Tip for families:** Be cautious about releasing these records and any other clinical records to individuals who do not have a professional obligation to keep information confidential. For example, be cautious **before releasing records** to schools. Information in reports may be used against your child, may be dispersed through informal discussions, or may relate to other family members.

 **Tip for families:** It also is important for you to participate in the assessment process, as well as in the subsequent staffing. The assessment process is where the thinking happens that results in the decision issued at the staffing. It is therefore important to get involved at this stage and not simply wait for the staffing meeting. And, it is important for your child's lawyer to be involved during this time as well.

³³ Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007). The working relationship between the juvenile court clinics and DYS is set forth in a Memorandum of Understanding between these two entities. For a copy of this document, contact DYS or the Director of Court Clinic Services, Administrative Office of the Juvenile Court, at 617-788-6550.

 **Tip for families:** You should request a copy of your child's DYS Case History so that you may verify its accuracy and understand the DYS assessment of your child. A parent, legal guardian or attorney has the right to receive a copy of this document (and any other document contained in a youth's DYS records) by making an oral or written request. If you make the request orally, be prepared to present proper identification. If you make the request in writing, submit it by certified mail, return receipt requested. Keep a copy of all your correspondence with DYS.

CHAPTER 8:

CLASSIFICATION

Referral for classification	8.2
Notice of the staffing.....	8.2
The staffing	8.3
Service delivery plan.....	8.5
Classification grid	8.7
Classification	8.8
Factors to be considered in classification.....	8.9
Issuing a decision and other documents.....	8.10
Appeal of decision.....	8.11

CLASSIFICATION


Classification is the method by which DYS determines both the range of time (if any) which a youth, once committed to DYS, will spend in secure treatment facilities and residential treatment facilities, and the placement location itself. The purposes of classification are to estimate the degree of risk or danger posed by the youth, to estimate the violent or repetitive offender's ability to control his behavior, and to provide a placement that meets the youth's needs and protects the community.¹ Classification actually involves two steps: a staffing meeting and a classification meeting.

Referral for classification

At the end of the assessment period, DYS administrators from the DYS Regional Office will determine whether a youth will be referred to the classification process for possible admission to a facility that can provide treatment in a secure setting.² If so, the youth is referred to the classification process and the classification panel, described below, will determine if he, in fact, needs to be placed in secure treatment.³

Notice of the staffing


DYS seeks to provide each youth's parents or legal guardians with notice of the date and time of the youth's staffing. However, DYS sometimes is unable to provide such notice if it does not have current parent or guardian contact information.

 **Tip for families:** In order to ensure that you receive notice of the staffing, send a letter to the DYS caseworker indicating that you plan to attend the staffing and that you would like to receive notice of the date and place of the meeting. Provide the DYS caseworker with current contact information for you and for your child's lawyer so that DYS can notify both of you. You and the lawyer should agree to tell each other immediately upon receiving any notice of the meeting. Your child's lawyer should be in touch with DYS if necessary to ensure that the staffing is scheduled for a mutually convenient time. Make every effort to attend the staffing.

1 109 CMR 4.01.

2 109 CMR 4.04(1).

3 109 CMR 4.04(2).

 **Tip for families:** In preparation for the staffing, you or your child's lawyer should ask your child's caseworker or DYS clinician what the DYS clinician intends to recommend regarding time and placement. At this point, share appropriate information with the DYS clinician.

The staffing

The staffing is what DYS calls its formal case conferences.⁴ There are various types of staffings that a youth may experience. The purpose of all DYS staffings is to provide a forum for open discussion regarding a youth's needs, which are then addressed in the youth's DYS service delivery plan.

One type of staffing is an initial staffing which occurs on newly committed youth at the assessment unit within 30 days of commitment in order to determine the youth's service delivery plan.⁵ At the staffing, the youth's case history will be presented and the team will develop a recommendation for a range of time which a committed youth should spend in secure and residential treatment facilities and identify potential placement locations. The recommendation regarding duration of confinement is largely guided by DYS's classification grid, with consideration of risk to public safety and any other mitigating or aggravating factors.

This staffing is chaired by the youth's caseworker and is attended by the youth's treatment team, which includes the caseworker, the district manager, the assessment unit staff, and the youth.⁶ Additional preferred participants include a parent or legal guardian, the DYS education liaison, teaching coordinator, the youth's lawyer, and other involved community stakeholders.⁷ If the youth has a probation officer, Department of Children and Families worker or Guardian Ad Litem (GAL), those individuals also could attend.

The youth's court-appointed defense lawyer must prepare for and represent the youth at the staffing; the state agency that supervises defense lawyers has imposed this requirement.⁸ The lawyer may bring

4 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

5 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.


6 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

8 Committee for Public Counsel Performance Guidelines Governing the Representation of Indigent Juveniles in Criminal Cases, VIII., J.8.5.g).


witnesses and other supporters.⁹

Further, after DYS administrators hold a classification meeting (discussed below) to consider the recommendation made at the staffing meeting and issue a decision, the lawyer must assist the youth in filing an appeal of the decision, if the youth desires to appeal.¹⁰

 **Tip for families:** Be sure to tell the DYS caseworker that you will be attending the staffing so DYS will know to wait until you arrive to begin the meeting.

Participants in the staffing have a right to attend the entire staffing meeting. However, DYS may ask that a youth be excluded from a portion of the staffing meeting so that sensitive information may be discussed.¹¹ A DYS request to exclude the youth from the room for a portion of the meeting should be directed to the youth and his lawyer. If the youth chooses to honor the request, the rest of the participants, may remain in the room, and the lawyer should stay.

While all these parties can have input, the decision regarding length of confinement is largely controlled by DYS' classification grid, discussed below.


 **Tip for families:** In calculating your child's progress towards serving his period of confinement to DYS, this time assignment begins after the 30-day assessment period when your child is placed in a treatment unit.


At the staffing, parties also should identify a review date 90 days before the the youth is released from a residential setting if the youth hits all his benchmarks. (This 90-day-before-release date will trigger certain release planning.)

9 Committee for Public Counsel Performance Guidelines Governing the Representation of Indigent Juveniles in Criminal Cases, VIII., J.8.5.g).


10 Committee for Public Counsel Performance Guidelines Governing the Representation of Indigent Juveniles in Criminal Cases, VIII., J.8.5.g).

11 For example, DYS staff may want to discuss the topic of domestic abuse without the youth being present. DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

 **Tip for families:** It is essential for you and your child to attend and participate in the staffing in order to advocate for your child. A parent will likely have more knowledge about the youth than anyone at the table. Your child may want to also bring a person or persons who know him well, as well as any important records.

 **Tip for families:** To help your child feel comfortable participating in the staffing, which can be an intimidating experience, prepare him beforehand for what to expect. Explain that he will likely be asked to answer questions about the incidents that resulted in his commitment to DYS. (Of course, if your child is appealing his commitment order, he should not speak -- during assessment, during the staffing, or during treatment -- about the incidents leading to the charges against him.)

After the staffing, these parties present the recommendation that they develop to DYS administrators when they conduct the youth's classification, discussed below.

 **Tip for families:** After the staffing, it is helpful for parents to send a letter restating their main points regarding placement, duration and the service plan. (A sample letter can be found in Appendix F of "From A Parent's Perspective" found at <http://www.cfjj.org/Pdf/Handbook2.pdf>.) This letter should be sent immediately after the staffing to the youth's caseworker so that it can be submitted to the DYS administrators participating in the classification meeting.

Service delivery plan

At the staffing, in addition to discussing the issues of placement and duration of confinement, the parties will draft a service delivery plan. This plan is an individualized, written plan that identifies the youth's needs and describes how DYS will address them.

All parties should participate in the development of this plan. In developing the plan, parties should identify and address risks facing the youth. The service delivery plan will be used to draft the youth's individual treatment plan.

The service delivery plan contains two kinds of services: core

services and pro-social services.¹² Core services are services that must be made available to all DYS involved youth.¹³ Pro-social services are supplemental services that shall be made available to clients at the discretion of their DYS caseworker.¹⁴ Access to pro-social services should be available to all clients on a consistent basis.¹⁵

Core services include:

- education;
- vocational services/employment;
- behavioral health services;
- medical services;
- housing;
- insurance and other benefits.¹⁶

Pro-social services include:

- civic engagement/community service;
- recreation;
- faith-based activities;
- mentoring;
- arts-related services/activities.¹⁷

After the service delivery plan is created, it is continually updated when necessary to respond to the particular youth's needs as he progresses through DYS until discharge.¹⁸ Typically, there are monthly team meetings on the residential units when the youth's progress and the service delivery plan can be discussed and reviewed.¹⁹

After a DYS committed youth returns to the community, he will continue to have a DYS service delivery plan as long as he is under DYS supervision.²⁰ The plan for a youth living in the community may include both services that DYS provides directly and those provided by other entities.

The service delivery plan of a youth in the community must be updated at least every six months or with every change in placement or level change.²¹ DYS will hold periodic meetings in the community to review the youth's progress and the service delivery plan.²²

12 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.

13 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.

15 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.

16 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.

17 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 7.


18 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

19 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

20 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

21 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 47.

22 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

 **Tip for families:** In cases where a youth has special needs that cannot be met by existing DYS programs or services, DYS may be able to contract with outside entities to provide appropriate services. If you believe that your child has such needs, you should raise this concern during the discussion of the service delivery plan and in other appropriate settings.

Classification grid

DYS uses a classification grid as a factor in determining, based on the type of offense, how long a youth will remain in secure and/or residential treatment facilities.²³ The grid assigns, based on offense, a grid level (from 1 to 7).²⁴ Grid levels 1-6 have a minimum and maximum recommended treatment time for each offense.²⁵ DYS uses the most serious offense to determine treatment time.²⁶

DYS operates under detailed grids.²⁷ These grids have not been put into official DYS regulation or policy but, in practice, they replace earlier grids that were promulgated in DYS regulation.²⁸

The grid level time assignments are as follows:

<u>Grid level</u>	<u>Time Assignment Range</u>
1	1 to 4 months
2	3 to 5 months
3	5 to 8 months
4	8 to 12 months
5	12 to 24 months
6	24 to 36 months
7 (murder)	life ²⁹

While most youth receive a time assignment that is consistent with the grid, the assigned time designated in the grid is actually only a guide in

²³ 109 CMR 4.05; DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004) (definition of "classification").

²⁴ It is unlikely for a youth to be on level 7, occurring only in the rare case when a person was under the age of 14 when charged. Email correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Mar. 1, 2010).

²⁵ 109 CMR 4.05; Department of Youth Services Classification Grids, in Hon. R. Marc Kantrowitz *et al.*, Massachusetts Juvenile Delinquency & Child Welfare Law Sourcebook (MCLE 2009) at 634-648.

²⁶ See DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004) (definition of "grid level").

²⁷ Department of Youth Services Classification Grids, in Hon. R. Marc Kantrowitz *et al.*, Massachusetts Juvenile Delinquency & Child Welfare Law Sourcebook (MCLE 2009) at 632-648; see also DYS Classification Principles (draft dated June 5, 1997) in Hon. Jay Blitzman *et al.*, Massachusetts Juvenile Court Bench Book, Mass. Continuing Legal Education, Vol. I, Appendix I-B (2003) at I.A-89-93.

²⁸ 109 CMR 4.05.

²⁹ Department of Youth Services Classification Grids, in Hon. R. Marc Kantrowitz *et al.*, Massachusetts Juvenile Delinquency & Child Welfare Law Sourcebook (MCLE 2009) at 634-648.

decision making regarding the type of treatment program to be provided.³⁰ The grid is not the only factor utilized to determine the treatment services to be provided to youths or the length of time required to provide adequate treatment.³¹

As the grid is only a guide, DYS may deviate up or down one level depending on aggravating or mitigating factors. Thus, DYS could assign a shorter or longer period depending on the youth's needs.

Classification

After the staffing meeting, DYS administrators holds a classification meeting to review the recommendations regarding duration of confinement and placement developed at the staffing.³² While DYS regulation currently requires that this meeting take place within 30 business days of the youth's commitment,³³ DYS intends to revise this regulation.³⁴

The DYS administrators that participate in the classification meeting are called the Regional Review Team (RRT). In practice, the RRT convenes shortly after the staffing meeting, usually within one week.³⁵

The RRT is an administrative body in each DYS region composed of at least three DYS Senior Managers.³⁶ The Regional Director of Operations chairs the RRT and the Regional Clinical Coordinator is considered a standing member.³⁷ The RRT decides, among other things, appropriate classification (grid level, program placement and anticipated time recommendation) for newly committed youth or recommitted youth, as well as youth escalated to the RRT via the revocation process.³⁸

Specifically, RRTs consider the recommendations developed at the staffing meeting for the youth regarding duration of treatment and placement, and accept or modify these recommendations. RRT decisions are made based on the following factors: caseworker recommendation; treatment required to reduce risk factors and the chances of recidivism; grid level; risk to public safety; and any other remarkable mitigating or aggravating factors.³⁹ RRTs also review all grid level or time

30 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25.

31 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 25.

32 109 CMR 4.04(2); DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004) (area review teams decide the appropriate classification for committed juveniles under the classification grid).

33 109 CMR 4.04(3).

34 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

35 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

36 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

37 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

38 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

39 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

recommendation deviation requests for approval.⁴⁰

At the meeting of the RRT, others may attend in addition to the RRT members. The youth's caseworker and/or the caseworker's manager (i.e., the caseworker's supervisor) make a presentation about the youth at the meeting.⁴¹ And, the youth's parents or legal guardian and the youth's lawyer also may attend.⁴²

The RRT reviews the recommendations for placement and duration of confinement made at the staffing meeting. Then, the RRT will either confirm the recommendations or modify them. In modifying them, the RRT may deviate up or down one grid level from that recommendation, which would result in a shorter or longer period of confinement.⁴³ For example, an RRT may deviate up a grid level so that a youth can access a mental health treatment program that requires a certain minimum duration.⁴⁴

The RRT also has the ultimate say regarding the placement itself, taking into consideration a range of factors such as distance from home, therapeutic need and security issues.⁴⁵ The RRT may be helpful in arranging for a youth to be placed at a specialized program.

Factors to be considered in classification

As noted above, in addition to reviewing the grid, DYS must consider certain mitigating or aggravating circumstances when classifying a youth.⁴⁶ Such factors include, but are not limited to:

⁴⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

⁴¹ DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006); see also 109 CMR 4.04(6) (caseworker must attend classification meeting and be prepared to present and discuss the youth's current situation, case history and the regional office's recommendation for disposition).

⁴² DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

⁴³ DYS Handout, workshop entitled "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006) at 4.

⁴⁴ DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

⁴⁵ DYS Handout, workshop entitled "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006) at 4.


⁴⁶ 109 CMR 4.06; DYS Handout, workshop entitled "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006) at 4.

- whether the offense for which the youth was committed caused extensive property damage or serious bodily injury and whether it was cruel and sadistic;
- whether the youth played a major role in the offense,
- whether the youth was pressured or coerced, and whether the youth committed the offense while on bail;
- an examination of the youth’s history of offenses, with an assessment of whether there is an increasing pattern of violence and frequency, particularly against special populations;
- whether the youth took a leadership role in delinquent acts and whether the acts are directed toward people or property;
- the youth’s ties to the community and level of support from family, friends and relatives;
- a determination of whether and why the youth has failed in previous placements.⁴⁷

The RRT may also consider as a negative factor certain serious behaviors that a youth may have displayed while in detention, such as recruiting gang members.⁴⁸

Issuing a decision and other documents

Current DYS regulations require that the RRT issue a written decision regarding classification within five business days of the classification meeting.⁴⁹ DYS reports that, in practice, the RRT will likely issue this decision within one week of the classification meeting.⁵⁰ The decision need not be unanimous.⁵¹ The RRT records its decision on a document entitled “Classification Form.”

 **Tip for families:** You should request, and it’s important to have, a copy of the Classification Form. In addition, you should request, if you haven’t already obtained them, a copy of the documents completed at the staffing meeting, including the staffing notes and the initial service delivery plan.

⁴⁷ 109 CMR 4.06.

⁴⁸ DYS panel presentation, “What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?” Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).


⁴⁹ 109 CMR 4.07.


⁵⁰ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

⁵¹ 109 CMR 4.07.

Appeal of decision

If a youth believes his placement is wrong, he may appeal the decision by writing a letter to the DYS Deputy Commissioner in DYS's Central Office in Boston within seven business days of receiving notice of the RRT's decision.⁵² The youth's DYS caseworker is required to inform the youth of his right to appeal and, if the youth wishes to appeal, assist the youth in writing the appeal request.⁵³ The Deputy Commissioner must provide a written response to the appeal within 14 days of receiving the request.⁵⁴ Current DYS practice is that the DYS Legal Department, acting as designee for the Deputy Commissioner, writes this response.⁵⁵ The decision of the Deputy Commissioner on appeal is final.⁵⁶

 **Tip for families:** If your child wants to appeal, he should consider asking his lawyer for help in writing the appeal request. (While these are not formal appeals, the participation of a lawyer is not required, and you and your child may well be able to write your own, it nonetheless may be helpful to have the assistance of your child's lawyer in pursuing this option.) If you need further assistance, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

 **Tip for families:** While DYS now tries to assign youth to placements near home, sometimes DYS still places a child in a facility that is far from home. While you are at the staffing, you may ask DYS to try to place your child somewhere close enough to your home that you may visit your child and attend meetings without too much difficulty. If transportation is an issue for you, make sure the placement is accessible to you. DYS does not have to place your child in a facility that is convenient for you, but you can ask them to do this. DYS values family involvement and may help provide transportation for visits. DYS may be able to provide telephone or video conferencing when you cannot get to the facility where your child is being held.

52 109 CMR 4.08(1).

53 109 CMR 4.08(2).

54 109 CMR 4.08(3).

55 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

56 109 CMR 4.08(3).

CHAPTER 9:

PLACEMENT

Types of DYS facilities and programs	9.2
Hardware secure treatment facilities	9.2
<i>Detention units</i>	9.3
<i>Assessment units</i>	9.3
<i>Committed units.....</i>	9.4
<i>Revocation units.....</i>	9.4
Staff secure treatment facilities and programs	9.4
Other placement options	9.4
Selecting a DYS facility or program.....	9.5
Pursuing community-based settings	9.6
Pursuing specialized placements	9.7
Transition from placement to placement	9.7
Treatment review meetings	9.8
Extension of time assignment.....	9.9
Levels of supervision in confinement	9.10
Dual status youths	9.12

PLACEMENT

Types of DYS facilities and programs

DYS operates 57 facilities serving detained or committed youths confined to DYS custody. Some of these facilities and programs are operated by DYS and some by private provider agencies that have contracts with DYS.

These facilities can be divided into two categories:

- **hardware secure treatment facilities;** and
- **staff secure treatment facilities/programs.**

Most of these facilities serve youths from 6-9 months, although some serve youths for more than two years.¹ In addition to these two categories, some DYS involved youths are in **other placement options**.

Apart from the above types of facilities and programs (in which youths reside), DYS also operates 29 District and Satellite Offices, through which DYS provides supervision and support to DYS involved youths living in the community with parents, legal guardians, foster families, or in an independent living program.² These DYS offices are discussed further in Chapter 21, Supervision in the Community.

The three placement options (secure treatment facilities, residential programs, and placement with other state agencies) are discussed in more detail below.

Hardware secure treatment facilities

Hardware secure treatment facilities are secured by hardware such as locked doors and windows (in contrast to staff secure facilities which are secured at least in part by staff). Hardware secure treatment facilities may be specialized to treat youths at various stages in the DYS process, including the following four types of units:

1 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 7.

2 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 1.

Detention units

All DYS detention units are hardware secure.³ These units may house youths who:

- have been charged and are being held on bail awaiting court action;
- are already committed but are waiting for a placement in another facility or program to have an available opening; or
- were living in the community but violated a provision of a grant of conditional liberty and were placed on a detention unit as a consequence of that violation.

DYS has one specialized secure detention unit. This unit is located on a separate DYS-operated wing within an adult correctional facility in Plymouth, the Plymouth County House of Correction.⁴ This unit is solely for juveniles, despite being inside an adult facility. The unit houses juveniles charged with or convicted of murder or juveniles who face adult sentences.

DYS offers the following services at detention units: education, behavior management, medical services, recreational opportunities, violence prevention curriculum, and substance abuse treatment.⁵

Assessment units

These units are a type of DYS hardware secure treatment unit where a youth goes after intake when a bed becomes available in an assessment unit to await DYS caseworker assignment, staffing, and placement. Youth receive a series of assessments on this unit, which includes review and compilation of family involvement, educational history, prior juvenile record, presence or absence of substance abuse, medical and psychiatric history, and review of risk factors related to offending. This assessment should be completed within 30 days, when the staffing will be held.⁶ The assessment then is used to develop an individual treatment and service plan and to determine future DYS placements.

³ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 3.

⁴ The Plymouth County Sheriff's Department sets rules for the Plymouth County Correctional Facility. See Plymouth County Sheriff's Department, Inmate Information, http://www.pcsdma.org/Inmate_Information.asp. For example, these rules prohibit an inmate from receiving a visit from someone other than an attorney or clergy during his first 10 days of admission to the facility. Plymouth County Sheriff's Department, Visitor Information, http://www.pcsdma.org/Visitor_Info.asp. The Sheriff's Department has applied these rules to youth held in DYS facilities located at the Plymouth County Correctional Facility. See, e.g., Maria Cramer and Kristen Green, Answers Sought in School Slaying, *The Boston Globe* (Jan. 26, 2007) at B5. If your child is being subjected to these rules, contact an advocate or lawyer for assistance.

⁵ DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3.

⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

Committed units

These hardware secure units house committed youths with grid level 4-6 offenses.⁷ DYS will also consider youths committed on grid level 3 offenses involving fire arms and sex offenses for hardware secure units.⁸ Initial time recommendations in these placements range from 6 to 24 months.⁹

These hardware secure facilities provide a cognitive behavioral approach to treatment including clinical, educational and behavioral components.¹⁰ Individual treatment progress is monitored by criteria-driven behavioral goals.¹¹ Youths graduate from such facilities when he has acknowledged his criminal behavior, understands what led to his offending, has developed a relapse prevention plan, has engaged in reducing risk to the community, and has demonstrated a pattern of pro-social behaviors in confinement.¹²

Revocation units

These hardware secure units hold youths that have violated a grant of conditional liberty and have been returned to DYS confinement.

Staff secure treatment facilities and programs

Staff secure treatment facilities typically serve committed youth with grid level 1-3 offenses.¹³ Initial time recommendations in these placements range from 3 to 8 months.¹⁴ These community-based programs provide a cognitive behavioral approach to treatment including clinical, educational and behavioral components.¹⁵ Examples of these programs include group homes and (Chapter 766) residential school programs.¹⁶ Average lengths of stay are shorter in group home settings and longer in residential school settings. Staff secure facilities emphasize accountability, pro-social skill development, and planning for community re-entry.¹⁷

Other placement options

7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29.

8 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 29-30.

9 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

10 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

11 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

12 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

13 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

15 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

16 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

17 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

DYS offers other placements in certain cases. These options include the youth being placed at home with DHS supervision, foster care, transitional living, Job Corps, and revocation facilities and programs.¹⁸

In addition, DHS committed youths who are involved with other state agencies may also be placed within programs operated by those agencies. As of January 1, 2009, 6% of DHS committed youths were placed with other agencies.¹⁹ These agencies include, but are not limited to:

- the Department of Children and Families (i.e., foster care, residential placement);
- the Department of Mental Health (i.e., Intensive Residential Treatment Program, psychiatric hospitalization);
- the Department of Public Health (i.e. residential substance abuse programs); and
- the Department of Correction (i.e., adult correctional facility).²⁰

Department of Mental Health involved youths are discussed further in Chapter 13, Mental Health and Substance Abuse Services During Confinement.

Selecting a DHS facility or program

There are many different DHS facilities and programs where a youth may be placed. While DHS facilities and programs fall into general categories of secure treatment, residential and community and while the level of security and type of treatment needed will be foremost in DHS's consideration, there are still choices to be made based on multiple factors.

At classification, the Regional Review Team (RRT) must identify a program that best meets the youth's needs and best protects the community at that time. The panel has several factors to consider in reaching this decision. Among these are the following:

First, the RRT must consider the youth's gender. All DHS residential units are single sex (although a building may have both boys' units and girls' units).²¹

Second, the RRT must decide whether the youth needs treatment in a secure setting. If so, the RRT may assign him to a secure treatment

¹⁸ DHS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

¹⁹ DHS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 2.

²⁰ DHS, Case Management Practice and Procedure Manual (June 14, 2010), at 30.

²¹ Erin Trahan, "Navigating DHS" in Girls' Coalition Newsletter (Fall 2002/Winter 2003), at 8.

program for a specified length of time.²² The purpose of secure treatment is to rehabilitate the youth by teaching “pro-social attitudes and behaviors using a cognitive-behavioral approach.”²³ In addition to secure treatment programs, DYS has community-based residential programs, “all of which provide clinical and educational services that emphasize accountability and pro-social skill development.”²⁴ If such a community-based program were appropriate, the RRT could place a youth directly into such a program.²⁵ It also is possible that DYS decides at classification that the youth doesn’t require placement in either a secure treatment or residential program, but can be released directly back to the community.

Third, the RRT must consider the youth’s treatment needs. The type of treatment administered at these programs varies. There are residential programs that provide drug treatment and employment services, stabilization programs, and group care programs. If a youth has serious mental illness, DYS can send the youth to a facility operated by the Department of Mental Health; this topic is addressed further in Chapter 13, Mental Health and Substance Abuse Services During Confinement.²⁶

Fourth, the RRT must consider the duration of the facility-based portion of the youth’s commitment. There are facilities for short-term stays of a few days, weeks or months. There are also facilities for long-term stays of months or years.

Pursuing community-based settings

While DYS and others may find appropriate an initial placement in secure treatment for many youths, not all youths require such a placement. For some, there may be factual evidence to support an initial placement in a community-based setting. Such evidence should be presented while the youth is before the court during the sentencing hearing, and then again at both the staffing and classification meetings.

For example, a youth might have a mental health problem that clinicians believe would best be treated in a community-based setting. As discussed in Chapter 7, Trial, Adjudication, and Disposition, there is a growing consensus among mental health clinicians that community and home-based services are, in general, more effective at addressing mental

²² 109 CMR 4.04(2).


²³ DYS 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 22.

²⁴ DYS 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 22.

²⁵ DYS 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 22.

²⁶ Department of Mental Health & Department of Youth Services, Memorandum of Understanding (1999); DMH, Transfer Protocol Guidelines, available at <http://www.mass.gov/dmh>.

health problems and rehabilitating youth than facility-level care. The argument may be particularly compelling if the youth lives in one of the communities with an initiative to serve youths with mental illness in their homes. These communities and their respective initiatives are listed in Chapter 6 and described in the Resource Guide at the end of this book.

 **Tip for families:** It is important to advocate for appropriate services for youth with mental health issues. Even if you are not successful at eliminating a period of secure confinement for your child, you will nonetheless alert DYS to the youth's mental health needs.

Pursuing specialized placements

When DYS believes that a committed youth needs intensive treatment that cannot be provided by one of DYS's own or contracted programs, DYS can buy a placement for that youth elsewhere.²⁷ Sometimes DYS shares the cost of a placement with another entity, such as a local school district.²⁸ For example, the youth may need intensive services to treat mental health problems, substance abuse, fire-setting behavior or sex offender behavior. This type of placement happens rarely and would only be considered for extreme cases of need.²⁹

Thus, a girl who comes to DYS with a history of multiple hospitalizations might be placed in a specialized mental health program outside the DYS system. If after a certain period of treatment, perhaps six months, it is clear that the youth still needs mental health treatment, DYS will complete an application for Department of Mental Health services on the youth's behalf.³⁰

Transition from placement to placement

A youth may well reside at more than one program during his confinement to DYS. For example, DYS first might place a youth in a secure treatment setting. The youth would remain there until he acknowledges his behaviors and their precipitants, develops a plan to

27 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

28 DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007). If such a placement is not secure but is an open door setting, DYS would require a youth to sign a grant of conditional liberty prior to going to the placement. DYS correspondence to MHLAC (Jan. 14, 2008).

29 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

30 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

avoid future delinquent actions, and demonstrates good behavior.³¹ DYS would then transfer the youth to a residential group home, foster home or home to family.³²

Foster care is used for a limited number of youths who are less criminally involved and are placed in this setting primarily because they do not have a viable home to which to return.³³ In certain cases, family members or others in the community known to the child can be approved to become a foster parent.

To ensure that the youth is properly placed, every program should review each youth's placement monthly at a minimum.³⁴ Parents should be encouraged to attend these meetings.

The goal at each placement is to prepare for successful re-entry into the larger community.³⁵

Treatment review meetings

DYS conducts monthly treatment reviews for all youths in one of its placements.³⁶ The treatment reviews will include: the youth, the unit clinician, the clinical director of the unit, an educational liaison from the unit, medical staff, administrative staff, the caseworker, and the youth's family.³⁷

Youths have the right to attend and participate in the development of the treatment plan.³⁸ DYS encourages the parents' and guardians' participation in these meetings as they are essential members of the youth's treatment team.³⁹

At the meetings, monthly treatment goals will be reviewed in the following areas:

- counseling;

31 DYS, Clinical Services Provided by the Department of Youth Services, <http://www.mass.gov/dys>.

32 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3.

33 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3.

34 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

35 DYS, Clinical Services Provided by the Department of Youth Services, <http://www.mass.gov/dys>.

36 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 28 (re: placement generally), 32 (re: residential placement).

37 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 28 (re: placement generally), 32 (re: residential placement).


38 DYS Policy # 2.2.4, Progress Reports (Jan. 1, 1999), Procedures, A.2; DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedures, B.9.

39 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007); see also DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedures, B.9.

- education;
- medical and unit behaviors.⁴⁰

These goals will be reviewed and revised monthly as needed and will serve as the basis for the service delivery plan when the youth enters the community.⁴¹

The caseworker and clinical staff can call additional treatment reviews at any time, such as when there are behavioral issues, changes in family dynamics, issues regarding participation in the program's clinical milieu, or for other matters.⁴²

 **Tip for families:** If you have an issue that you believe should be addressed at a treatment review meeting, ask your child's caseworker to put the issue on the agenda for the next monthly meeting. If the issue is more urgent, ask the caseworker to schedule an additional meeting immediately.

The caseworker must document the details of the meetings in the youth's Monthly Report or in a Staffing Note.⁴³

Extension of time assignment

DYS occasionally extends the facility time initially assigned to the youth pursuant to the classification grid.⁴⁴ DYS generally takes this step when it believes that the youth has not yet completed treatment successfully or the youth has exhibited violent, dangerous or seriously oppositional behaviors and is not ready to return to the community. The DYS caseworker and staff at the program in which the youth resides make a recommendation to the RRT which decides if the youth should be extended. In such cases DYS will identify a new time frame with a tentative release date for the youth to remain in DYS confinement.

This recommendation is made at treatment review meetings.


40 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 28.


41 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 28.

42 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 34.


43 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 28.

44 DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004) (definition of "extension of time assignment").

 **Tip for families:** Parents always should attend treatment review meetings if possible. Particularly if you believe the treatment team is thinking about extending your child’s duration of confinement, you should attend your child’s treatment team meetings so that you may be involved in the discussion. Unfortunately, the DYS secure detention unit at the Plymouth County House of Corrections does not allow parents to attend treatment team meetings. If this practice is posing a problem for you, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

 **Tip for families:** Encourage your child to participate actively in the treatment offered by his program. This may help your child get more from the program and come home sooner.

RRTs review and authorize any extension of time assignments for DYS committed youths.⁴⁵ If the treatment team wants to pursue an extension, the request and reason for it must be in writing and submitted to the RRT for authorization. The RRT may grant or deny the extension. The RRT will produce a document entitled “Extension of Time Assignment” which indicates that the extension was granted or denied, the length of any extension granted, and the rationale for any denial.⁴⁶

 **Tip for families:** If you are unhappy with the recommendation of the team, you should submit a written explanation outlining your disagreement to the Regional Review Team before they make their decision. Additionally, once the Regional Review Team makes their decision, you have a right to review the Extension of Time Assignment document. If you are unhappy with the decision, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book. Some advocates have appealed these decisions.

Levels of supervision in confinement

Most, although not all, programs serving DYS committed youths operate on a behavior modification model involving a level system.⁴⁷

This system classifies youths according to risk and has a clearly defined

⁴⁵ See DYS Regional Review Team, Extension of Time Assignment form (example on file with MHLAC).

⁴⁶ DYS Regional Review Team, Extension of Time Assignment form (example on file with MHLAC).

⁴⁷ DYS, A User’s Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.

program to provide rewards and consequences to youth based on behavior. The system operates by giving and removing points, which ultimately causes the youth to move up or down levels of privileges.

This system has 8 levels of supervision, with 8 being the most restrictive.⁴⁸ Levels 8, 7 and 6 are used in secure treatment facilities.⁴⁹ Level 5 is used in residential programs.⁵⁰ Levels 4 through 1 are used in the community, with supervision provided by community re-entry centers.⁵¹ These levels are discussed in Chapter 21, Supervision in the Community.

These levels are distinct from the grid levels assigned during classification.⁵²

The DYS level system is based on cognitive behavioral principles.⁵³ In addition, DYS uses other intervention tools which are nationally accepted best practices such as Dialectical Behavioral Therapy (DBT) and the Positive Youth Development Model. This means that DYS uses a combination of cognitive therapy and behavior therapy to change a youth's behavior. In cognitive therapy, one examines and addresses thought patterns in order to solve one's problems. In behavior therapy, one replaces learned bad behaviors with better behaviors. DYS uses both of these approaches to teach youths the skills to avoid bad behaviors. The level system reinforces this process.

Thus, movement from level to level depends upon a youth's behavior. Good behavior should result in movement to a less restrictive level.

DYS uses the level system for several reasons.⁵⁴ First, it is a way for staff to observe and document youth behavior. Second, it provides a way to give youth feedback on a day to day basis. Finally, it provides a way for DYS to chart a youth's behavior and determine why a youth may not be succeeding.

48 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.

49 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.


50 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.

51 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.

52 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.

53 DYS, A User's Guide, presented at Suffolk University Juvenile Justice Center, Understanding and Accessing Services for Children with Mental Health Needs (Nov. 22, 2002) at 65.


54 DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007).

 **Tip for families:** If you believe that behavior management being applied to your child is failing to promote good behavior, ask for a meeting to review the system and discuss your child’s case. It is appropriate to look carefully at such practices and seek outside assistance if necessary.

Dual status youths

If a committed youth is released from DYS custody and then is re-arrested for another offense that leads him back to DYS, he is called a “dual status youth.” If such a youth is held on bail in an adult correctional facility or is held in a psychiatric facility, DYS will lodge a “detainer” (in the form of a temporary warrant) to prevent the youth from being released.⁵⁵ Instead, the youth will be turned over to DYS custody. If, on the other hand, the youth is held on bail in a DYS detention unit, the youth who is able to post bail will instead remain in DYS custody.

The effect of the DYS detainer is that, if the youth makes bail on the new charge, he will be released to DYS custody for consideration of revocation of his grant of conditional liberty. A hearing, following the procedures for a revocation hearing discussed in Chapter 17, Grant of Conditional Liberty, must be held within seven business days of DYS receiving notice of the intended release.⁵⁶ If the hearing officer concludes that valid reasons exist to detain, the detainer will continue; otherwise, it will be removed.⁵⁷

 **Tip for families:** This practice is generally used on a new arrest, juvenile or adult. A detainer is usually lodged at arraignment and stays in place if the defendant is held in an adult facility or a mental health facility. Parents and legal guardians should seek to ensure that a hearing is actually held and attend this hearing.

If such a youth is then re-committed for the new offense, he will be re-assessed, have another staffing, and be reclassified. The most serious offense will inform the decisions regarding his course of treatment at DYS. The new offense may result in a modification of the treatment response or may alter the treatment mode to focus on a more serious risk.

⁵⁵ 109 CMR 8.13; DYS Policy # 1.3.6(a), Violation of Conditional Liberty (Nov. 1, 2004), Procedure, L.1.

⁵⁶ 109 CMR 8.13; DYS Policy # 1.3.6(a), Violation of Conditional Liberty (Nov. 1, 2004), Procedure, L.2.

⁵⁷ 109 CMR 8.13; DYS Policy # 1.3.6(a), Violation of Conditional Liberty (Nov. 1, 2004), Procedure, L.3.

CHAPTER 10:

OVERVIEW OF RIGHTS DURING CONFINEMENT

U.S. Constitutional rights	10.5
DYS regulations and policies	10.5
Accessing DHS records.....	10.6
Treatment plans.....	10.8
Treatment team meetings.....	10.9
Room confinement	10.10
Restraint according to DHS restraint policy	10.13
<i>Restraint in state-run DHS programs according to DHS restraint policy</i>	<i>10.13</i>
<i>Restraint in any DHS or vendor-run program according to DHS restraint policy</i>	<i>10.15</i>
Restraint in DHS run or contracted facilities according to DHS regulation.....	10.16
Mechanical restraint during transport according to DHS'	

transportation policy	10.17
Searches during transport	10.18
Visits	10.18
Telephone	10.21
Postal mail	10.22
Special management	10.23
Program Advocate	10.24
Passes to the community	10.25
Behavior modification	10.26
Staff interaction with youth	10.27
Language.....	10.28
Religious services.....	10.28
Searches in facilities and programs.....	10.29
<i>Searches with metal detectors</i>	10.30
<i>Pat searches</i>	10.31
<i>Strip and undergarment searches</i>	10.31
<i>Body cavity searches</i>	10.32
<i>Room searches</i>	10.33
<i>Searches of common areas</i>	10.33
<i>Unit shakedowns</i>	10.34
Personal property	10.34
Complaint process.....	10.34
Incident reporting.....	10.35

Department of Early Education and Care (DEEC)	
regulations	10.37
Case management and service planning	10.37
Complaint process	10.38
Incident reporting	10.38
Behavior management	10.38
Restraint	10.39
Time out.....	10.40
Corporal punishment	10.41
Visits	10.41
Telephone	10.42
Postal mail	10.43
Grooming and hygiene	10.44
Clothing	10.44
Searches	10.45
Religious practice	10.45
Recreation	10.45
Mental health treatment.....	10.45
Medical care	10.46
The administration of medication.....	10.47
Department of Mental Health (DMH)	
statutes, regulations, and other	
provisions	10.48
Mental health admission and commitment	10.48
Visits	10.50
Telephone	10.50
Postal mail	10.51
Access to outside advocates	10.51
Privacy.....	10.51

OVERVIEW OF RIGHTS DURING CONFINEMENT

For youths in DYS custody, “the care, custody and discipline of the children . . . shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.”¹ This requirement does not mean that a youth in DYS custody will have all the comforts of home, but he should be treated well.

In addition to this right, youths in DYS run or contracted facilities will have additional rights. What rights a youth has depends on the setting in which he has been placed. Possible sources of rights include:

- Rights provided by the ***U.S. and Massachusetts Constitutions***. These rights apply in all settings of confinement.
- Rights provided by ***DYS statute and regulation***. These rights apply to facilities run by DYS or run by an agency that has contracted with DYS to provide services.
- Rights provided by ***DYS policies***. The policy itself typically indicates the settings and situations to which it applies. DYS policies are available at <http://www.mass.gov/dys> (under Publications and Reports).
- Rights provided by ***Department of Early Education and Care (DEEC) regulations***.
- Rights provided by ***Department of Mental Health (DMH) regulations***.
- Rights provided by the rules of a program. These rules should be described in a program’s Client Handbook.


This chapter discusses certain rights provided by the U.S. and Massachusetts Constitutions and by DYS, DEEC, and DMH legal provisions. It does not, of course, describe all the rights that DYS involved youths have under these provisions.


Further, this chapter does not include many of the medical, mental health and education rights that these youths have. These rights are discussed in other subsequent chapters of this handbook. This chapter should be read in conjunction with these chapters.


In some cases, there is more than one source for the same type of right. For example, both DYS and DEEC have detailed provisions

¹ Mass. Gen. L. ch. 119, § 53.

that regulate the use of restraint. It is possible that, in some cases, more than one set of rules on a certain topic will apply. This may be confusing, particularly if the rules do not seem to be consistent.

 **Tip for families:** Appendix A to this book provides a table listing many of the rights discussed in this chapter and provides the citations to DYS and DEEC legal provisions regarding those rights.

 **Tip for families:** It can be difficult to determine what rights your child has in a particular program. One simple step you and/or your child can take is to request a copy of the program's Client Handbook. Programs should provide copies to you and/or your child. If you or your child are having difficulty obtaining a copy of the program's Client Handbook, contact the program director, your child's DYS caseworker, or the DYS legal office.

 **Tip for families:** If you are having difficulty determining what other rights described here might apply, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

U.S. Constitutional rights

Courts have interpreted the Fourteenth Amendment of the U.S. Constitution as providing confined persons with three critical rights. These are:

- the right to safe conditions of confinement;
- the right to medical care; and
- the right to freedom from unnecessary restraint.²

In addition, a number of courts have interpreted the U.S. Constitution to require a brief mental health screening upon admission.³

DYS regulations and policies

This section describes standards and rights established by

² *Youngberg v. Romeo*, 457 U.S. 307 (1982); *Santana v. Collazo*, 793 F.2d 41 (1st Cir. 1986).

³ For a detailed discussion of the case law regarding this and other requirements in the care of mentally ill inmates, see James R. Pingeon and Daniel Crane-Hirsch, Center for Public Representation, Summary of Professional Standards Governing Mental Health Services in Prisons and Jails (1997), available at <http://www.centerforpublicrep.org/>. (The MAYSI-2 screening that DYS conducts, which is discussed in this booklet, would meet that constitutional standard.)

DYS regulations and policies. (Standards and rights conveyed by Massachusetts General Laws Chapters 119 and 120, the statutes applicable to DHS involved youth, are described in other portions of this book.)

Different regulations and policies have different scopes (i.e. the range of persons and places that are required to comply with the provision). In general, the scope of the provision is described at the beginning of each of the following subsections.

This discussion of DHS regulations and policies does not apply to youths held in pre-arraignment detention facilities known as Alternative Lockup Programs (ALPs). For a discussion of the Department of Early Education and Care regulations that apply to certain other ALPs (all the non-secure ALPs as well as certain secure ALPs), see the section entitled “Conditions in pre-arraignment detention facilities” in Chapter 5, After the Arrest.

Accessing DHS records

Youths have rights under DHS regulations and policy regarding the records and information that DHS maintains or controls.⁴

A youth involved with DHS has a right to have his records kept confidential by DHS.⁵ DHS may only release the youth’s records to others in certain limited cases.⁶ In such cases, DHS must keep a record of who receives client information.⁷

DHS authorizes its caseworkers to share client information verbally with any authorized DHS employee, other state human services agency, criminal justice agency, law enforcement agency, or local educational authority (LEA) as needed.⁸ Caseworkers presented with a request for a youth’s DHS file or a document within it must forward the request to the DHS Keeper of Client Records (a person DHS designates to administer rules regarding records), DHS General Counsel’s Office at the DHS Central Office in Boston.⁹ Written requests for disclosure of youth records should be accompanied by a release signed by the youth’s parent/legal guardian, a release signed by the youth, or a court order, as appropriate.¹⁰

4 109 CMR 3.00 *et seq.*; DHS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999).

5 109 CMR 3.00 *et seq.*

6 109 CMR 3.04, 3.05.

7 109 CMR 3.07.

8 DHS, Case Management Practice and Procedure Manual (June 14, 2010), at 55.

9 DHS, Case Management Practice and Procedure Manual (June 14, 2010), at 55.

10 DHS, Case Management Practice and Procedure Manual (June 14, 2010), at 55-56.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established federal protection for the privacy of personal health information.¹¹ Under HIPAA, DYS and its provider agencies are required to protect any identifiable individual's health related information from unauthorized outside access or internal misuse. Pursuant to HIPAA, DYS (and its contracted providers) must store a youth's health-related information in a safe, secure manner, and DYS (and its contracted providers) must limit access to a youth's health-related information to those specifically authorized to view it. Additionally, pursuant to HIPAA, access to a youth's health-related information by anyone outside DYS or custodial providers is prohibited without written consent of the youth and/or parent or legal guardian or unless otherwise permitted by law.

While a youth's record is confidential, the youth himself has a right to examine any records or documents created about him by DYS staff.¹² Parents with legal custody, legal guardians, and lawyers representing such youth also have a right to examine such records or documents.¹³ The HIV status of a DYS involved youth is strictly confidential and may not be revealed to anyone.¹⁴

Youth, parents/legal guardians and lawyers should make any record requests to the Keeper of Client Records, DYS's General Counsel's Office at the DYS Central Office in Boston.¹⁵ The Keeper of Client Records must respond within five business days.¹⁶

The Keeper of Client Records may deny a request for access if the data is part of an investigation and permitting such access at that time would likely prejudice the investigation.¹⁷ In such a case, denial can continue only until the investigation is complete and any resultant proceeding commenced or one year has passed from the commencement of the investigation, whichever is sooner.¹⁸

The Keeper of Client Records may set fees for copying records requested,¹⁹ and \$0.10 may be charged for photocopying per page.²⁰

11 Public Law 104-191.

12 109 CMR 3.04(1).

13 109 CMR 3.04(2).

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 56.

15 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 55.


16 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, D.2.

17 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, D.4.

18 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, D.5.

19 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, E.2.

20 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, E.3.

 **Tip for families:** Parents and legal guardians seeking to access their child's records should address their request to the DYS Keeper of Client Records, DYS General Counsel's Office at the DYS Central Office in Boston. Record requests are routinely responded to by that office.

If information in such records is inaccurate, youths, parents, and lawyers also have the right to file an objection with the Keeper of Client Records.²¹ The Keeper shall investigate the validity of the objection and provide a written decision to the youth within 30 days.²² The Keeper shall correct any error and notify any recipient of inaccurate data.²³ If the objection is found to lack merit, the youth may still have his objection included in the file.²⁴ Decisions also may be appealed to the Commissioner within 30 days of the youth's receipt of the decision.²⁵ The Commissioner shall write a decision within 30 days of receipt of the appeal and notify the youth within seven days of writing it.²⁶ Any failure by the Keeper or Commissioner to render a timely decision during appeal will result in a favorable decision for the youth.²⁷ Parties may agree to extend time periods.²⁸ The Commissioner's decision may be appealed to the Secretary of Human Services within 30 days of receiving the Commissioner's decision.²⁹ The decision of the Secretary may be further appealed to a court of law.³⁰

Treatment plans

Youths in DYS run or contracted residential or community programs have rights under DYS's policy regarding treatment plans.³¹

Within one week of a youth's intake to a residential or community program (discussed below in Chapter 12, Medical Services During Confinement), the program in which DYS has placed the youth must develop a treatment plan.³²

The plan, written on a standard form, should contain an assessment of the youth's needs, measurable short and long term goals

21 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.1.

22 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.2.

23 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.3.

24 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.4.

25 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.5.

26 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.6.

27 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.7.

28 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.7.

29 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.8.

30 DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999), Procedure, I.9.

31 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999).

32 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, B.7.

and objectives, and the methods to be used to reach these objectives at this program.³³ Program staff develops and implements the plan.³⁴ A licensed clinician must approve the plan.³⁵ Plans must be reviewed monthly and revised as often as needed.³⁶

Treatment plans must be signed and dated by the youth, the youth's parent or legal guardian and the person responsible for care.³⁷

Treatment team meetings

Youths in DYS run or contracted residential or community programs have rights under DYS's policies regarding treatment plans and progress reports.³⁸

Each youth has a right to a monthly treatment team meeting at which his progress is discussed.³⁹ The meeting is conducted by the DYS caseworker and attended by clinical and program staff. The youth has a right to attend the team meetings and participate in the development of the plan.⁴⁰ Parents and legal guardians also have these rights.⁴¹ A youth's lawyer may attend this meeting, but DYS does not routinely provide the lawyer with notice of the meeting. The lawyer may contact the caseworker for the dates of the meetings.

Staff must document meetings with progress reports.⁴² These reports must be finished within ten working days of the meeting.⁴³ The reports are part of the youth's records – both at the program and at the DYS regional office.⁴⁴ DYS uses the information in the progress reports when assessing treatment needs and making extension of time assignment decisions, discussed below.⁴⁵

If the youth has not been meeting program expectations and DYS staff persons believe that a youth is not ready to re-enter society, team members at their meeting can make a recommendation to the

33 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, A.1, 4, 5, B.8.

34 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, B.6.

35 DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004) (definition of "treatment plan").

36 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Policy section.

37 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, B.9.

38 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999); DYS Policy # 2.2.4 Progress Reports (Jan. 1, 1999).

39 DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure C.2.; DYS Policy # 2.2.4(b), Progress Reports (Jan. 1, 1999), Procedure, A.1.

40 DYS Policy # 2.2.4 Progress Reports (Jan. 1, 1999), Procedure, A.2; DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, B.9.

41 See DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999), Procedure, B.9.

42 DYS Policy # 2.2.4(b), Progress Reports (Jan. 1, 1999), Procedure, B.2.

43 DYS Policy # 2.2.4(b), Progress Reports (Jan. 1, 1999), Procedure, B.2.

44 DYS Policy # 2.2.4(b), Progress Reports (Jan. 1, 1999), Policy section.

45 DYS Policy # 2.2.4(b), Progress Reports (Jan. 1, 1999), Procedure, C.1.

RRT for a time extension.⁴⁶ If a youth has not had good behavior while in confinement, DYS may choose to hold the youth in the facility for a longer period of time.

Treatment team meetings are also the place where transition and aftercare issues are discussed. Meetings are conducted 90, 60, and 30 days prior to a youth's targeted release date from his program to his next placement. The DYS caseworker works with a team of people, including the youth and family, to develop service delivery and relapse prevention plans which provide for the transition from the current program to the next placement and which include referrals to appropriate service providers in the community. For further discussion regarding transition planning, see Chapter 16, Transition Back to the Community.

Room confinement

Youths detained by or committed to DYS have rights under DYS regulation and policy regarding the use of involuntary room confinement, defined as placing a youth in a locked or unlocked room, with authorization, where the staff decides when the youth may leave.⁴⁷

DYS regulation establishes basic standards. Room confinement only may be used to control seriously disruptive or dangerous behavior.⁴⁸ Room confinement may only be used with the authorization of the unit director or designee; if staff believe that immediate physical restraint is clearly necessary after they have confined a youth to a room, staff may initiate the physical restraint if they obtain authorization from a unit director or designee within 15 minutes.⁴⁹ However, staff must try room confinement before resorting to mechanical restraint.⁵⁰

DYS regulation also requires that, if a youth is confined, he has the right to be in a room that has appropriate heating, lighting, and ventilation and that contains a bed with a mattress, pillow, and sheets for sleep periods.⁵¹

Staff must document any use of room confinement and visually observe the youth at least every 15 minutes.⁵² To confine a youth for longer than two hours, staff must obtain special permission; the longer

46 DYS Policy # 1.1.4(a), Policy Definitions (July 1, 2004), Definitions (definition of "extension of time assignment").

47 109 CMR 5.00 et seq.; DYS Policy # 3.3.1 (May 1, 2008); 109 CMR 5.03 (definition of room confinement); DYS Policy # 3.3.1 (May 1, 2008); Procedure A, Definitions.

48 109 CMR 5.01.

49 109 CMR 5.05.

50 109 CMR 6.04(1).

51 109 CMR 5.04.

52 109 CMR 5.07.

the period of confinement, the greater the extent of the authorization required.⁵³ If a youth is held for more than 12 consecutive hours, he must be visited at least once every three hours by administrators, counseling staff, or medical staff.⁵⁴

If a youth is confined to a room, he has the right to know why he is confined, to speak with a mediator about the situation, and to respond to the accusations within two hours of confinement.⁵⁵

Each facility must develop a policy that outlines the specific behavior which will result in room confinement and that requires the most limited and cautious use of room confinement.⁵⁶

DYS policy repeats some elements of the DHS regulation on room confinement and establishes additional standards. Staff may place a youth in individual room confinement only if certain conditions exist:

- the youth exhibits seriously disruptive or dangerous behavior, or a safety or security concern arises;
- less restrictive crisis intervention techniques have failed; and
- staff obtain proper authorization.⁵⁷

The room must have a window through which the youth is observable at all times, adequate light and ventilation, appropriate temperature and reasonable cleanliness, and a mattress, bed linens and pillow during sleep periods (unless removed in accordance with DHS Suicide Assessment policies or a youth is damaging or misusing these items).⁵⁸

Staff must:

- advise the youth of the reason for confinement and the behavior necessary for release;
- ensure that the youth has seasonally appropriate clothing;
- ensure that the youth may use a bathroom upon request at least once per hour, unless more frequent use is required due to medical status;
- ensure that the youth receives meals and fluids in the room on the same schedule as other youths in the program;
- ensure that the youth receives visits from a chaplain or clergy person;

53 109 CMR 5.06.

54 109 CMR 5.04.

55 109 CMR 5.06(6).

56 109 CMR 5.01.

57 DHS Policy # 3.3.1 (May 1, 2008), Procedure B, 1.

58 DHS Policy # 3.3.1 (May 1, 2008), Procedure B, 3

- arrange for a visit at least every three hours by the Program Director, Assistant Program Director, Shift Supervisor, Clinical staff, or Medical staff;
- follow detailed authorization and re-authorization requirements described in DYS policy;
- attempt to engage a youth in individual room confinement in an exit strategy, once every 30 minutes (this applies to a staff not engaged in the initial incident);
- release the youth as soon as he is under control, and staff believe he is ready to rejoin the population safely.⁵⁹

Staff may:

- provide the youth with education material, reading material, and mail;
- remove the youth for a break for a specific purpose, including exercise to gain control;
- allow the youth a supervised visit or call to help the youth gain control.⁶⁰

Staff may use unit-wide room confinement in these circumstances:

- during shift change, for up to 30 minutes (or longer with approval from the Program Director or during an emergency);
- during a unit shakedown (with prior authorization) for up to three hours;
- during other activities which leave only one staff on the unit (with prior authorization).⁶¹

Staff must document all room confinements in the Unit Log, including total time in confinement and client name.⁶² For individual room confinement staff must also complete a Room Confinement Observation Sheet.⁶³

Client monitoring requirements include:

- no room confinement for a youth on Alert, Elevated, or Full Suicide Watch status;
- four minute checks during the first hour;
- monitoring after the first hour every 10 minutes (secure facilities) to 15 minutes (residential facilities).⁶⁴

⁵⁹ DYS Policy # 3.3.1 (May 1, 2008), Procedure, B.2, 6, 7, 8, 11; Procedure E.4.c.; Procedure, F; Procedure, G.

⁶⁰ DYS Policy # 3.3.1 (May 1, 2008), Procedure, B. 10, 12, 13.

⁶¹ DYS Policy # 3.3.1 (May 1, 2008), Procedure, C.

⁶² DYS Policy # 3.3.1 (May 1, 2008), Procedure, D.

⁶³ DYS Policy # 3.3.1 (May 1, 2008), Procedure, D.


⁶⁴ DYS Policy # 3.3.1 (May 1, 2008), Procedure, E.

Restraint according to DYS restraint policy

Youths in DYS-run or contracted facilities have rights both under DYS regulation and DYS policy regarding the use of restraint in such settings. The DYS Policy on Restraints and the Use of Force is the leading source for current DYS practice regarding restraint.⁶⁵ The policy is broader than DYS' restraint regulations and discusses physical escorts as well as restraint. This policy will be outlined first, in this section, and the regulation, second, in the next section.

Under this policy, certain categories of youths have rights regarding restraints that occur in their programs:

- youths in DYS run programs (whether staffed by state or vendor employees);⁶⁶
- youths in programs run by vendors who have contracted with DYS have rights regarding the documentation of restraint under this DYS restraint policy;⁶⁷
- youths in programs run by vendors who have contracted with DYS may have further rights if the program has adopted the whole DYS restraint policy.⁶⁸

 **Tip for families:** Note that in addition to the rights regarding restraint described in this section, youths may have additional rights regarding restraint pursuant to DYS restraint regulations (discussed in the following section) and DEEC regulations (discussed later in this chapter). (DEEC regulations apply to DYS secure detention facilities and secure treatment programs run by providers or DYS.)

Restraint in state-run DYS programs according to DYS restraint policy

DYS policy discusses both mechanical and physical restraint. Mechanical restraint is defined as any physical or mechanical technique that includes the use of handcuffs to temporarily control behavior.⁶⁹

⁶⁵ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

⁶⁶ DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section. (This policy was designed to comply with DEEC regulations regarding restraint, 102 CMR 3.00 et seq., discussed in the section on DEEC below.)

⁶⁷ DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section & Procedure H.

⁶⁸ DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section.

⁶⁹ DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, A.4.b).

Physical restraint is using physical holding to restrict freedom of movement.⁷⁰ A physical escort, which is touching or holding a hand, wrist, arm, shoulder or back to have a youth who is acting out walk to a safe location, is allowed and is not a physical restraint.⁷¹

For restraint to be used, the youth must be demonstrating by his actions that he is dangerous to himself or others and staff must have concluded that no other intervention has been or is likely to be effective in averting the danger.⁷²

Staff must try verbal counseling, point-system sanctions, room confinement, and direct warnings before using restraint.⁷³ An exception to this rule is if a youth attacks another person suddenly or without warning or presents an imminent danger to himself or others.⁷⁴

Staff may not restrain youths as punishment or for convenience.⁷⁵ Staff may not restrain for non-compliance with a program rule, staff directive or expectation alone.⁷⁶ Staff may restrain to protect program property, but only when staff reasonably believes that the safety of the youth or others is threatened.⁷⁷

Staff may not use: chokeholds; headlocks; sitting, kneeling, or putting substantial body weight on the youth (except in the process of the takedown); full or half nelsons; excessive twisting of limbs; hog-tying; use of pressure points to inflict pain; striking or hitting; biting or scratching; any other similar, non-approved forms of contact; or use of chemicals including mace and pepper spray.⁷⁸

Staff must continuously monitor the youth's physical condition while in restraint.⁷⁹ Staff must immediately release a youth who shows any sign of significant physical distress, such as difficulty breathing during restraint, and shall provide the youth with immediate medical help.⁸⁰ Staff must release the restrained youth at the first sign that it is safe to do so.⁸¹

Any youth who is restrained more than five times in one week shall receive a review of clinical and behavioral needs by his caseworker and/ or assigned clinician within three working days of the fifth restraint.⁸² Any

70 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, A.4.a).

71 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, A.3, C.1.

72 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section.

73 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.1.

74 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.1.

75 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.4.

76 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.5.

77 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.6.

78 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.7, G.1.

79 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.8.

80 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.9.

81 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section, Procedure, D.10.

82 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.11.

resulting change of services must be documented in the youth's service plan.⁸³

A restraint must begin with a take down.⁸⁴ If the youth is calm and under control, he must be released.⁸⁵ If the client remains a physical danger, staff may continue the physical restraint for up to five minutes (unless no mechanical restraints are available).⁸⁶

During that time, staff must do the mechanical restraint.⁸⁷ Staff handcuff the youth, roll the youth on the side and sit him up, making sure he can breathe.⁸⁸ When the youth is calm, he is allowed to stand.⁸⁹ Then he is escorted to his room or another safe area before being released from restraints. The youth must remain in his room or safe area until staff believes that the youth is ready to return to the general population.⁹⁰ If the youth is not calm and released within twenty minutes, staff must follow procedures for a longer-term mechanical restraint.⁹¹

If longer term mechanical restraints are used, they cannot be attached to fixed objects.⁹² Staff must always be with and supervising the youth.⁹³ The location manager or designee must reassess the need for mechanical restraints every twenty minutes to ensure their timely removal.⁹⁴ Staff may not use mechanical restraints for more than one hour unless the DYS Regional Administrator approves the use.⁹⁵

Restraint in any DYS or vendor-run program according to DYS restraint policy

Youths in programs run by DYS or run by vendors who have contracted with DYS have the rights regarding documentation and reporting of restraint contained in DYS's restraint policy.⁹⁶

Programs must keep an operations log and monthly reports.⁹⁷ Programs must communicate to DYS Central Office regarding each restraint resulting in injury requiring medical treatment via telephone and

83 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, D.11.

84 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.1.

85 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.2. a).

86 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.2.b), E.6.

87 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.2.b).

88 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.3.

89 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.4.

90 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E.4.

91 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, E. 5.

92 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, F.2.

93 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, F.3.

94 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, F.4.

95 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, F.5.

96 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Policy section.

97 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.1.a.

via an electronic Serious Incident Report form.⁹⁸


Staff must report to Location Managers all violations of DYS policy on mechanical restraint that they witness.⁹⁹

Location managers must file a report of suspected abuse or neglect (a “51A”) with Department of Children and Families (DCF) if staff’s use of force is reasonably alleged to be excessive and/or abusive.¹⁰⁰

If a 51A is filed with DCF, DYS must notify parents or legal guardians and medical staff (to perform a medical exam), among others.¹⁰¹

Restraint in DYS run or contracted facilities according to DYS regulation

While DYS policy is more detailed regarding the rights of youths involved with DYS with respect to restraint, youths in DYS run or contracted facilities have rights under DYS regulation regarding the use of restraints in such settings.¹⁰²

 **Tip for families:** In addition to the rights regarding restraint described in this section, youths may have additional rights regarding restraint pursuant to DYS restraint policy (discussed in the previous section) and DEEC regulations (discussed later in this chapter). (DEEC regulations apply to DYS secure detention facilities and secure treatment programs run by providers or DYS.) Restraint issues are sometimes difficult to address because of the many kinds of rules that may apply. It may be helpful to contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book. In addition, Appendix B to this book provides a comparison of DYS and DEEC restraint provisions.

DYS regulations on restraint are limited to a discussion of

98 DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, A.1. Presumably, the requirement of DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.1.b., that all restraints be documented on serious incident reporting forms was superceded by DYS’s newer incident reporting policy which has more limited reporting requirements regarding restraint.

99 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.2.a. While DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.2.a. required that reports be in writing, on the Serious Incident Report form and while DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.2.b. required that the Location Manager begin an internal investigation as soon as possible and notify the DYS Area Director (who must notify the DYS Deputy Commissioner and the DYS General Counsel), these requirements appear to conflict with the more recent DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, A.1.

100 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.3.a (incorporating requirements of Mass. Gen. L. ch. 119, § 51A).

101 DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000), Procedure, H.3.a.
102 109 CMR 6.00 *et seq.*

mechanical restraint. A mechanical restraint is a device used to limit a youth's movement, such as handcuffs, ankle cuffs, and security belts.¹⁰³ (Unlike other state agencies, DYS is allowed to use cuffs as restraints.) Mechanical restraints may not be attached to any fixed object, so restraint to a bed or board is not allowed.¹⁰⁴

These regulations state that mechanical restraints may only be used when uncontrollable behavior presents serious threats to the safety of the youth or others and all reasonable alternatives including talking, room confinement, or use of minimum physical restraint have been attempted.¹⁰⁵ Any use of mechanical restraints requires the approval of the program director or the senior administrator on duty.¹⁰⁶ The restraints must be removed as soon as they are no longer needed.¹⁰⁷ Further, DYS may not use mechanical restraint for more than one hour.¹⁰⁸ If conditions are sufficiently serious to require additional restraint, the staff must contact the DYS central administrator on call immediately for consultation.¹⁰⁹

Mechanical restraint during transport according to DYS' transportation policy

DYS' transportation policy establishes rules for DYS employees regarding the use of restraint during transport and during program interviews at a youth's prospective program.¹¹⁰ DYS employees may use mechanical restraint in the following instances:

- transport to a hardware secure facility (including, at a minimum, handcuffs and leg shackles);¹¹¹
- transport to a staff secure facility;¹¹²
- transport to or from a hardware or a staff secure facility for medical purposes (handcuffs and leg shackles), unless a decision not to use such restraints has been made and cleared through the location manager.¹¹³

When a youth in a hardware or staff secure facility attends a program interview, the youth's caseworker determines whether

103 109 CMR 6.03.

104 109 CMR 6.04(4).

105 109 CMR 6.04(1).

106 109 CMR 6.04(2).

107 109 CMR 6.04(4).

108 109 CMR 6.04(4).

109 109 CMR 6.04(4).

110 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999).

111 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, B.1.

112 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, C.1.

113 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, D.2.

mechanical restraints are appropriate.¹¹⁴

During transport, DYS staff conducting the transport must personally apply any restraints they intend to use.¹¹⁵ They must ensure that blood circulation and breathing are not restricted.¹¹⁶ DYS staff may not restrain a youth to a part of a vehicle.¹¹⁷ DYS staff also must comply with DYS' policy on the use of restraints.¹¹⁸

“[C]ommunity transportation” or “transportation . . . to or from a community program” does not require the use of mechanical restraint.¹¹⁹ For such transportation, DYS personnel may use mechanical restraints at their own discretion.¹²⁰

Searches during transport

DYS policy also establishes rules for DYS employees regarding searches during transport.¹²¹ Staff transporting a youth to a hardware secure facility will frisk search the youth for contraband prior to transportation.¹²² Whenever possible, the search should be conducted by a staff of the same sex as the youth.¹²³ If staff suspect a youth of hiding contraband, staff will search the youth according to procedures outlined in DYS policies on searches, discussed in a separate section below.¹²⁴

Visits

Youths in DYS run or contracted residential programs have rights under DYS's visitation policy.¹²⁵

Residential programs must set specific weekday and weekend visitation times.¹²⁶ Staff must tell youths these hours and any visitation rules during intake.¹²⁷

Program staff also must notify the youth's parents or legal

114 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, B.2. (hardware secure), C.2. (staff secure).

115 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, F.2.

116 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, F.3.

117 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, F.4.

118 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, F.1.

119 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, D.1.

120 DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999), Procedure, D.2.

121 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999).

122 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, E.1.

123 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, E.2.

124 DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, E.4.

125 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999).

126 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Policy section.

127 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, A.1.

guardians of these hours and rules during the initial intake call whenever possible.¹²⁸ Staff must also send parents or legal guardians these hours and rules within three days of intake.¹²⁹

Staff may end a visit if rules are not being followed.¹³⁰ Staff must act appropriately and professionally when interacting with visitors.¹³¹

Upon giving consent, visitors are subject to a screening process for weapons, drugs and other contraband.¹³² Staff must use hand-held or walk-through metal detectors to screen all visitors.¹³³ In secure and residential facilities, staff may use pat searches by a staff of the same gender as the visitor if no metal detector is available, if the visitor has given written consent, and if there is a staff witness present.¹³⁴ Visitors may stop a search at any time, but must then immediately leave.¹³⁵

Visitors may bring objects, other than drugs, weapons, or contraband, into a facility at the discretion of the staff, but staff must inspect all packages and objects the visitor seeks to carry in.¹³⁶

Lawyers and clergy have an unlimited right to visit DYS youths, unless security could be compromised.¹³⁷

All visitors, except pre-teen children must present photo identification.¹³⁸ Visitors under age 18 must visit with an adult.¹³⁹

Staff may not deny entry to parents or legal guardians during regular visiting hours unless there is documentation that the program's security may be compromised or that the visit will unduly impact the youth's well-being in a negative manner.¹⁴⁰

128 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, A.2.

129 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, A.3.

130 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Policy section.

131 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Policy section.

132 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.7.a); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.8.a); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.5.a).

133 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.7.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.8.b); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.5.b).

134 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.7.g, h); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.8.g, h).

135 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.7.c); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.8.c); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.5.c).

136 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.7.d); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.8.d); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.5.d); DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Policy section.

137 DYS Policy #3.4.4(b), Visitation (Jan. 1, 1999), Policy section.

138 DYS Policy #3.4.4(b), Visitation (Jan. 1, 1999), Procedure, B.2.

139 DYS Policy #3.4.4(b), Visitation (Jan. 1, 1999), Procedure, B.4.


140 DYS Policy #3.4.4(b), Visitation (Jan. 1, 1999), Procedure, C.1.

Programs will create an approved visitor list and a visitor log for each youth.¹⁴¹

Staff will deny entry to any visitor who:

- appears to be under the influence of drugs or alcohol;
- is restricted from seeing the youth by a judicial order;
- is identified by the youth in writing as someone they do not want to visit with;
- is not on the current, approved visitors list;
- does not consent to be searched when asked;
- does not follow program rules on visitation; or
- is visiting a youth with “current treatment issues” or a youth who “has been acting out.”¹⁴²

Senior staff on duty must approve any denial of entry to visitors; in such a case, staff must complete an incident report and forward it to the location manager.¹⁴³

 **Tip for families:** This last basis for limiting visits to a residential program – that a youth has current treatment issues or has been acting out – is perhaps not as clear cut as the other bases for limiting visits. Visits should be limited under this basis if a youth’s behaviors raise concerns for the safety of the youth and the visitor. The mere fact that a youth has a mental health issue for which he is receiving treatment should not be a basis for restricting visits. Additionally, for acting out behavior to cause a restriction on the right to receive visitors, the behaviors should be serious and close in time to the visit. If you believe that visits are being wrongfully restricted for this or another basis, talk to the program director or contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Location managers must designate suitable space in the program for visits.¹⁴⁴ Staff is required to monitor visitors at all times.¹⁴⁵ A youth and his parents or legal guardians are allowed to speak a foreign language during visits.¹⁴⁶

141 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, D.2.

142 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, C.2.

143 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, C.3. While DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, C.3 required staff to complete an incident report and forward it to the location manager, this practice seems to conflict with the more recent DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, A.1.

144 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, E.2.

145 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, E.3.

146 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, E.7.

Parents and legal guardians may request that a location manager allow special visits for unusual or emergency circumstances.¹⁴⁷ Location managers or their designees may limit visits by extended family members if client treatment and behavior management issues justify such a limitation.¹⁴⁸

Telephone

Youths in DYS run or contracted programs have rights under DYS' telephone policy.¹⁴⁹

Programs must ensure that youths are able to access a telephone.¹⁵⁰ Programs should have a schedule and monitoring procedures.¹⁵¹ Programs may impose limits on length and number of calls.¹⁵² There must be enough phones to permit equal access to all youth.¹⁵³ Programs must inform youths of these rules.¹⁵⁴

Youths may make local or collect calls to parents, legal guardians, custodians and lawyers during scheduled hours.¹⁵⁵ Additionally, immediately after intake, newly admitted youths must be allowed to call their parents, legal guardian, foster parents, custodians and/or lawyers.¹⁵⁶ At a minimum, youths must be allowed one free long distance call to family per week.¹⁵⁷

A youth may phone his lawyer at any reasonable time, excluding weekends and holidays as often as they wish if the lawyer agrees to accept charges.¹⁵⁸ No time limits may be placed on these calls.¹⁵⁹

DYS policy provides that staff will place and monitor all calls for appropriate language and subject matter.¹⁶⁰ In addition, if the program staff thinks the call is being used to violate program rules or breach security, staff may directly monitor the call, but only after informing the telephone parties.¹⁶¹

147 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, F.1.

148 DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999), Procedure, F.2.

149 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999).

150 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

151 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

152 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

153 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

154 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

155 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, A.1.

156 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.


157 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Policy section.

158 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, A.5.

159 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, A.5.

160 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, A.3.

161 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, A.4.

 **Tip for families:** This policy means that once DYS has ascertained that your child is speaking with appropriate language and regarding an appropriate subject matter, staff should afford him privacy in that conversation.

Youths may receive calls from court workers, social workers, police, lawyers, and DYS personnel at any time.¹⁶² Youths may receive calls from others during scheduled times or at the program manager’s discretion and these calls will be monitored.¹⁶³

While the DYS policy does not address cell phone use, DYS youth are not allowed to have cell phones on the units.¹⁶⁴

Postal mail

Youths in DYS run or contracted programs have rights under DYS’ mail policy.¹⁶⁵

Youths have a right to send and receive any amount of mail.¹⁶⁶ Programs may censor mail for “contraband and inappropriate material in order to ensure program security and client rehabilitation.”¹⁶⁷ Programs must supply postage for two letters per week.¹⁶⁸ Programs may restrict access to writing tools that could be used as weapons.¹⁶⁹

Letters to and from the courts, lawyers, the DYS Commissioner or Assistant Commissioner, and DYS Regional or Program Directors may not be opened by staff.¹⁷⁰ Programs may open and examine all other mail for contraband.¹⁷¹ Additionally, this incoming mail may be read, with the youth present, if “clear evidence justifies such action.”¹⁷² All packages shall be opened and inspected, with the youth present, and contraband will be removed.¹⁷³

Programs may open outgoing mail if the location manager believes that there are concerns “for program security, client rehabilitation, or

162 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, B.1.

163 DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999), Procedure, B.2.

164 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

165 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999).

166 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Policy section.

167 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Policy section.

168 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Policy section.

169 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Policy section.

170 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, A.

171 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, B.1

172 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, B.1.

173 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, B.2.

facilitates, encourages or instructs in criminal activity.”¹⁷⁴

Programs may withhold incoming and outgoing mail if it would “jeopardize security or rehabilitation, facilitates, encourages or instructs in criminal activity, or contains cash, checks or money orders over allowed amounts.”¹⁷⁵

If a program withholds mail, unless the mail is part of an ongoing internal DYS or law enforcement investigation, it must notify the youth and/or the sender of the reasons for the withholding and the appeal procedures.¹⁷⁶

If the program withholds any items from packages, the items must be inventoried on the youth’s property sheet and placed with the youth’s secured property.¹⁷⁷ Any monies withheld must be credited to the youth’s personal funds account.¹⁷⁸

Youths in programs have a right to have books, magazines, and newspapers unless the publication “jeopardize[s] security or rehabilitation, facilitates, encourages, or instructs in criminal activity, or depict[s] sexually explicit materials.”¹⁷⁹

Special management

Youths in DYS-run or contracted residential programs have rights under DYS’s special management policy.¹⁸⁰

A special management plan is a form of treatment plan that DYS uses to respond to youths who are:

- displaying serious behavioral problems as indicated by the program’s point/level system;
- failing to make behavioral progress; and/or
- disrupting program services and/or security.¹⁸¹

The special management plan must have measurable goals that respond to the problem behaviors and help the youth return to regular program activities as soon as possible.¹⁸²

174 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, B.3.

175 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, B.5.

176 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, D.1, 2.

177 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, D.4.

178 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, D.3.

179 DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999), Procedure, C.

180 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999).

181 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Policy section.


182 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Policy section and Procedure, B.4.

In some juvenile justice systems, special management plans result in youths being segregated from others on the unit. However, Massachusetts DYS has not outlined, in their regulation on special management plans or elsewhere, what the typical components of a special management plan are.

The plan must be developed by the program director or designee.¹⁸³ The plan must be written within 24 hours of a youth being placed on special management status.¹⁸⁴ The program director or designee must review the plan daily and adjust it for progress made.¹⁸⁵

If the youth has not reached his goals within 72 hours, the program director or designee must contact the Regional Clinical Coordinator to review the situation.¹⁸⁶

While on a special management plan, the youth must receive hygiene, nutrition, medical, religious and legal services.¹⁸⁷ While on the plan, the youth also must receive educational and clinical services “unless the youth’s behavior does not allow them to occur.”¹⁸⁸

 **Tip for families:** Youths have fundamental rights to receive both educational and clinical services. Thus, it would only be in extremely rare situations that a program could limit access to these services due to a youth’s behavior. If you believe that a youth’s access to these services is wrongfully being limited, contact the program director or an outside advocate.

Program Advocate

Youths in DYS run or contracted residential programs have rights under DYS’ policy on program advocates.¹⁸⁹ DYS assigns youths in these programs an advocate in addition to the DYS caseworker.¹⁹⁰

At intake, all residential programs must assign a direct care staff person to serve as an advocate to each youth.¹⁹¹ Advocates must provide

183 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Procedure, A.1.

184 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Procedure, A.2.

185 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Procedure, A.3.

186 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Procedure, A.4.

187 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Procedure, B.2.

188 DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999), Policy section.

189 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999).


190 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

191 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, A.1, 2.

services seven days a week, so advocates may have to substitute for one another some days.¹⁹²

Advocates are the main source of information regarding the youth's behavior and adjustment.¹⁹³ Advocates are members of the youth's treatment team.¹⁹⁴

Advocates must talk to their assigned youth daily to learn whether the youth has any immediate needs for which the advocate could be helpful.¹⁹⁵ Advocates meet weekly for a more in-depth meeting with the youth to discuss adjustment, progress and needs.¹⁹⁶

 **Tip for families:** It is an advocate's job to communicate to the treatment team any needs that the youth presents, both at treatment team meetings and in between such meetings.

Passes to the community

DYS' goal is to make sure that each youth can be safely returned to the community when his period of confinement has ended. During a youth's stay in a residential program, he may become eligible to leave the facility for a short time by requesting a pass.¹⁹⁷ If he has behaved well, he may return home or elsewhere in the community for a day or overnight. This visit may be supervised or unsupervised.

Youths in DYS run or contracted programs have rights under DYS' policy on passes.¹⁹⁸

Youths in secure treatment units or residential treatment programs may be eligible for passes to certain places.¹⁹⁹ However, youths in secure treatment units would only receive supervised passes.²⁰⁰ Youths being held in a secure detention program or in DYS in lieu of bail cannot receive passes, except for family emergencies as authorized by a judge.²⁰¹ Passes may be for up to 72 hours when given.²⁰²

192 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, A.3.

193 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, A.4.

194 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, A.5.

195 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, B.1.

196 DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999), Procedure, B.2.

197 Passes from secure programs are highly unusual. Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

198 DYS Policy # 3.2.25, Passes (June 1, 1999).

199 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

200 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

201 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

202 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

Location managers, the DYS Regional Directors or designee of the youth's placement location, and the DYS Regional Director/designee of the youth's commitment must all approve an unsupervised pass.²⁰³ Youths fulfilling their initial facility time are ineligible for an in-state unsupervised pass.²⁰⁴

A youth in staff or hardware secure facilities is not eligible for a supervised pass until a month has passed, except for family emergencies.²⁰⁵

Any youth who completes one half of his minimum time assignment in a secure treatment facility is eligible for a supervised pass, if progress in the program can be documented and the pass is consistent with post secure treatment plans.²⁰⁶ Youths in residential treatment programs are not eligible for a pass if minimum time and treatment progress, as outlined in the treatment plan, have not been met.²⁰⁷

Youths on unsupervised and supervised passes have to comply with additional rules to ensure that DYS has sufficient contact during the pass.²⁰⁸ To receive a supervised pass, a request generally must be submitted seven days before the pass is to take place.²⁰⁹ To receive an unsupervised pass, the program usually must submit a request ten days before the pass is to take place.²¹⁰ There are exceptions for emergencies.²¹¹ DYS policy contains further rules regarding requesting and approving passes,²¹² as well as other special situations involving passes.²¹³

DYS has a standard "Individual Pass Request Form" that it requires all DYS and provider programs to use.²¹⁴

Behavior modification

Youths in DYS run or contracted residential programs have rights under DYS' policy on behavior modification.²¹⁵

203 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

204 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

205 DYS Policy # 3.2.25, Passes (June 1, 1999), Policy section.

206 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, F.1.

207 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, F.2.

208 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, M.

209 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, B, 1.

210 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, D, 1.

211 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, E.

212 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, B, C, D.

213 DYS Policy # 3.2.25, Passes (June 1, 1999), Procedure, B, C, D.

214 DYS Policy # 3.2.25, Passes (June 1, 1999) (attached to the policy).

215 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999).

All DYS and provider programs must have a behavior modification system that assesses youth's behavioral progress.²¹⁶ The system must reinforce good behaviors and provide negative consequences for rule violations and anti-social behaviors and attitudes.²¹⁷ The system also needs to process bad behaviors and acknowledge progress.²¹⁸ Rewards and punishments must be in proportion to the behavior at issue.²¹⁹

Youths, parents and legal guardians have a right to receive a written, easily understood copy of the program's behavioral system upon request.²²⁰ Staff must review the system with the youth at intake.²²¹ A copy of the system must be made available in languages other than English when there are significant numbers of youths whose primary language is not English.²²²

Staff must process rule violations and consequences with youths as soon as possible.²²³ Staff must also provide youths with regular and frequent feedback regarding behavior.²²⁴

Programs cannot withhold food, sleep, medical care, bathroom facilities, or visits by clergy or lawyers as consequences for bad behavior.²²⁵ Programs cannot use physical punishment, verbal abuse or uncomfortable physical positions in response to bad behavior.²²⁶

Staff interaction with youth

Youths in DYS run or contracted programs have rights under DYS' policy on youth and staff interaction.²²⁷

Programs must ensure that staff acts appropriately when interacting with youth.²²⁸ Staff must treat all youths fairly.²²⁹ Staff must follow point level systems consistently for all youths.²³⁰ Staff may not humiliate a youth when disciplining or correcting.²³¹ Staff must be sensitive to a

216 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Policy section.

217 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Policy section.

218 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Policy section.

219 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Policy section.

220 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, A.1, 3, 5.

221 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, A.2.

222 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, A.4.

223 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, A.7.

224 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, A.8.

225 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, B.2.

226 DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999), Procedure, B.3.

227 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999).

228 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999).

229 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999), Procedure, B.4.

230 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999), Procedure, B.7.

231 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999), Procedure, B.8.

youth's issues and problems and may not demean or trivialize the youth's concerns.²³²

Language

Youths in DYS run facilities have rights under DYS' policy on foreign languages.²³³

Except in certain circumstances described below, youths in DYS facilities must be allowed to speak their native language.²³⁴

Program staff may prohibit youths from speaking languages other than English if staff believe the safety and security of the location is being threatened.²³⁵ If program staff prohibits a youth from speaking a language other than English, staff must fill out an incident report at the end of shift with reasons for the denial.²³⁶ The report must be submitted to the program manager upon completion.²³⁷

Parents, legal guardians and lawyers are allowed to speak to youths in languages other than English during visits and telephone calls.²³⁸ Youths may write to these individuals in languages other than English.²³⁹

Youths with television and radios shall be allowed to view and listen to programs and music in languages other than English.²⁴⁰ Groups may view television programs and movies in languages other than English if the material is otherwise appropriate.²⁴¹

Rules and orientation material must be posted in English and Spanish.²⁴²

Religious services

All DYS involved youths have rights under DYS' policy on religious services.²⁴³

232 DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999), Procedure, B.9.

233 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999).

234 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

235 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

236 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

237 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

238 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

239 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

240 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

241 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

242 DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999), Policy section.

243 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999).

DYS involved youths have a right to practice any recognized religious faith so long as such practice does not undermine safety or security.²⁴⁴ DYS staff must provide access to religious services or practices for those youths wishing to participate in such activities.²⁴⁵ Programs may not require that a youth participates in religious activities.²⁴⁶ Youths may also ask to see a chaplain at any time, so long as a chaplain is available.²⁴⁷ Programs also must make provisions for clients with religious dietary restrictions.²⁴⁸ Programs shall decide which religious medallions and ornaments are permitted.²⁴⁹

Searches in facilities and programs

Youths served in the types of facilities listed below have rights under DYS's policies regarding searches in facilities and programs:

- secure facilities operated by DYS or by a provider under contract with DYS,
- residential facilities operated by DYS or by a provider under contract with DYS, and
- community programs that provide non-residential services (such as foster care, independent living, job corps, and casework or community supervision).²⁵⁰

These youths may be subject to searches to find weapons, drugs, contraband or other items that the youth could use to hurt himself or others or to engage in illegal or prohibited activities.²⁵¹ Searches also are used to identify mental or physical health concerns.²⁵² Searches may occur at a number of points during confinement. The types of searches that are allowed vary depending on the type of facility or program in which the youth is located.

DYS uses searches to ensure safety.

244 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Policy section; DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Procedure, A.8.

245 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Policy section.

246 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Procedure, A.1.

247 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Procedure, A.5.

248 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Procedure, B.2.

249 DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999), Procedure, B.4.

250 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006).

251 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Policy section; DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Policy section; DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Policy section.


252 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Policy section; DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Policy section; DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Policy section.

DYS provides several reasons for subjecting all DYS youths to a strip search upon initial admission. DYS check youths for:

- signs of abuse;
- piercings, which could be used as weapons;
- contraband, particularly to discourage outsiders from asking DYS-involved youths to act as couriers; and
- gang tattoos, as DYS uses gang affiliation when determining placement.²⁵³

Youths inside facilities may feel safer knowing that all youths have been searched before entry.²⁵⁴

Nonetheless, searches, especially strip searches, are humiliating. Additionally, they are particularly concerning when used on youths who have experienced sexual abuse and/or physical violence. Such history is common for many of the girls (and some of the boys) involved with DYS. Among precautions that are in place, searches should be conducted by a person of the same gender as the person being searched.²⁵⁵

 **Tip for families:** Advocates are extremely concerned about the use of strip searches on youths, as well as the use of searches as a routine practice. If you have concerns regarding searches, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

DYS has three policies that govern the practice of searching youths confined in facilities and programs: Policy # 3.1.3(a) Searches in Secure Facilities, Policy # 3.1.2(a) Searches in Secure Facilities, and Policy # 3.1.4(a) Searches in Community Programs. DYS also has a policy, discussed in a separate section, that governs the search of youths prior to their being transported.²⁵⁶

Searches with metal detectors

Community programs may use walk-through or hand-held metal detectors to screen youths when they are entering the program for the

²⁵³ DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

²⁵⁴ DYS panel presentation, "What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?" Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

²⁵⁵ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

²⁵⁶ DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999), Procedure, E.

first time or when returning from outside activities.²⁵⁷ If the alarm goes off twice, a youth may be pat searched, as described below.²⁵⁸ Eventually, youths who activate the detectors and do not reveal signs of metal may be transported to a facility to be strip searched, in accordance with DYS policy.²⁵⁹

Pat searches

DYS may pat search when warranted according to its search policy; individualized reasonable suspicion is not required by the policy.²⁶⁰ Reasonable suspicion means “sufficiently reliable information used to objectively reach a common sense conclusion that the client has engaged in conduct in violation of the law or DYS regulations or policies. . . . [t]he standard of reasonable suspicion does not require absolute certainty, but rather sufficiently particularized probability.”²⁶¹ Pat searches must be conducted by staff of the same gender as the youth and in the presence of a witness.²⁶²

Strip and undergarment searches

DYS uses strip searches in *secure facilities* routinely upon initial admission without individualized reasonable suspicion.²⁶³ Unless staff have continuously observed the youth while away, DYS may also use strip searches in secure facilities without individualized reasonable suspicion after certain events: transportation from court, medical appointments, hospitals, residential programs or another state agency; a youth’s liberty is revoked; an unsupervised pass; or a non-professional contact visit (such as by a family member).²⁶⁴ DYS also may conduct strip searches in secure facilities upon individualized reasonable suspicion that the youth has a weapon, drugs or contraband.²⁶⁵

Staff must be the same gender as the youth and there must be a staff witness (if the staff is a different gender than the youth, the staff cannot assist but can only observe the staff and not the youth).²⁶⁶ The

257 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.1.a).

258 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.1.b).

259 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.1.c).

260 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.1.a); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.1.a); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.2.a).

261 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, A.1.; DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, A.1.; DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, A.1.

262 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.1.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.1.b); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.2.b).

263 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.a).

264 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.b), c).

265 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.d).

266 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.e).

area shall, whenever possible, be private.²⁶⁷ In a strip search, staff ask the youth to remove his clothing, inspect the clothing, and visually inspect (but not touch) the youth.²⁶⁸ Staff then completes a body map diagram, documenting notable details of the youth's physical condition.²⁶⁹

In *residential facilities*, DYS may conduct an undergarment search (in which the youth leaves on his undergarments) for the same reasons and pursuant to the same rules as a strip search is allowed in a secure facility, although staff don't complete a body map diagram.²⁷⁰ In residential facilities, staff only may do a strip search if there is individualized reasonable suspicion to believe that a particular youth possesses a weapon, drugs, or contraband.²⁷¹ Strip searches must be conducted as they are in secure facilities.²⁷²

In community programs, staff may request a strip or undergarment search only when there is probable cause to believe that a particular youth: has a weapon, drugs, or contraband; or is engaging in self-injurious behavior.²⁷³ Probable cause means

information sufficient to establish an objectively fair probability that the client has engaged in conduct in violation of the law or DYS regulations or policies including, but not limited to being in possession of contraband, weapons or drugs or having engaged in behavior that poses a risk to the client or to others. The standard of probable cause does not require absolute certainty; probabilities are the factual and practical considerations of every day life upon which reasonable and prudent people act.²⁷⁴

The program manager or designee then must approve the search.²⁷⁵

Body cavity searches

A body cavity search is very intrusive and is not performed by DYS staff. In theory, it could include a search of penis, vagina, and/or rectum.

267 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.e).

268 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.f). Staff may never use a "squat and cough procedure" during any search. Legal Advisory from DYS General Counsel to DYS and Vendor Managers, Direct Care Staff (Jan. 26, 2007). In addition, during a strip search or any other procedure, staff may never ask a male youth to lift his testicles or penis or ask a female youth to lift her breasts. Legal Advisory from DYS General Counsel to DYS and Vendor Managers, Direct Care Staff (Jan. 26, 2007).

269 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.2.g).

270 DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.2.

271 DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.3.a).


272 DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.3.b).

273 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.3.a).

274 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, A.1.; DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, A.1.; DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, A.1.

275 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.3.a).

Youths in *secure and residential facilities* may be subject to a body cavity search only when there is probable cause to believe that the youth is in possession of a weapon, drugs or contraband and only after the youth has first been subjected to a strip search.²⁷⁶ If such probable cause exists, DYS must transport the youth to the nearest hospital emergency room by ambulance where authorized medical personnel shall conduct the search.²⁷⁷ DYS or facility personnel may not perform a body cavity search.

 **Tip for families:** Body cavity searches can be traumatic experiences for youth. If you are aware that your child has undergone such a search, be sensitive to its effects. If you have concerns regarding such searches, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Room searches

In *secure or residential facilities*, staff may search rooms (with two staff present) at the discretion of the facility or program manager or designee without individualized reasonable suspicion.²⁷⁸ Each facility must have a written procedure for room searches and must document all searches.²⁷⁹

Searches of common areas

DYS allows for searches of common areas. In *secure and residential facilities*, staff may search common areas without individualized reasonable suspicion to believe that a particular youth has weapons, drugs or contraband.²⁸⁰ Each facility must have written procedures for such searches.²⁸¹

In *community programs*, the program must have a written procedure for conducting such searches.²⁸² Common area searches must

276 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.3.a); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.4.a).

277 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.3.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.4.b).

278 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.4.a), c); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.5.a), c).

279 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.4.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.5.b).

280 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.5.a); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.6.a).

281 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.5.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.6.b).

282 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.4.a).

be conducted at least weekly, as well as at the discretion of the Program Manager, without individualized reasonable suspicion.²⁸³

Unit shakedowns

DYS allows for unit shakedowns -- during which an entire unit may be searched -- in secure and residential facilities.²⁸⁴ Shakedowns may be conducted at the discretion of the Facility Manager or designee without individualized reasonable suspicion to believe that a particular youth has weapons, drugs or contraband.²⁸⁵ A shakedown may be conducted at random times and without advance notice (although youths must be briefed as to what will occur immediately before the event).²⁸⁶ Facilities must have a written procedure for conducting searches during unit shakedowns.²⁸⁷ Searches of a youth's room during a shakedown must be conducted with at least two staff present.²⁸⁸

Personal property

Youths in DYS run or contracted residential programs have rights under DYS' policy on personal property.²⁸⁹

All money and personal property in a youth's possession when he enters a DYS or privately-operated placement, which cannot be permitted on the unit, must be inventoried on a sheet, in the presence of the youth, and stored.²⁹⁰ A copy of the inventory sheet must be provided to the youth at the time.²⁹¹

Complaint process

While DYS currently has no statute, regulation or policy outlining a complaint process for youths involved with the agency, there are various ways that a youth confined to DYS may complain about conditions, services, or care.

283 DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006), Procedure, B.4.b).

284 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.6.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.7.b).

285 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.6.a); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.7.a).

286 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.6.b); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.7.b).

287 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.6.c); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.7.c).

288 DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006), Procedure, B.6.d); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006), Procedure, B.7.d).


289 DYS Policy # 3.5.5, Storage and Disposal of Personal Property and Funds (June 1, 1999).


290 DYS Policy # 3.5.5, Storage and Disposal of Personal Property and Funds (June 1, 1999), Policy section.

291 DYS Policy # 3.5.5, Storage and Disposal of Personal Property and Funds (June 1, 1999), Policy section.

- during routine interaction between youths and their caseworkers, clinicians, treatment team members, teachers, program advocates, clergy, and others, youths may voice concerns.
- concerns may be brought at other times:
 - to the program (through staff, a supervisor, or the director); or
 - to DYS (through the caseworker, the district manager, the Regional Director, or the Commissioner’s Office, in that order).
- every DYS program should have available DYS Client Grievance Forms for youths to complete which are collected, reviewed, and acted upon by program staff.²⁹²
- youths also may pursue certain appeals of various DYS decisions, as discussed in other sections of this book.

DYS staff may forward a complaint to the DYS Legal Office. The General Counsel reviews such complaints and, when necessary, assigns them for investigation by Legal Office staff.²⁹³

 **Tip for families:** Concerns and complaints should be placed in writing. Keep a copy of all correspondence. Outline the concern and the response that you would like to see from DYS. If you are not satisfied with the response received, contact a person in a supervisory role or contact the DYS Legal Office. If your concerns or complaints are not adequately addressed, seek the assistance of a lawyer or outside advocate.

 **Tip for families:** In addition to the DYS grievance avenues described above, DEEC regulations, discussed below, require programs to have written procedures so that staff, parents, and residents may file complaints regarding a youth’s care. Therefore, a youth in a program covered by this DEEC regulation has a complaint process available to him for issues related to the program’s care.

Incident reporting

Youths in DYS run or contracted programs have rights under DYS’s

²⁹² Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

²⁹³ DYS panel presentation, “What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?” Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).

policy on serious incident reporting.²⁹⁴

DYS defines “serious incident” to include any of the following:

- death of a staff member or youth;
- serious injury or illness of a staff member or youth;
- escape by a DYS youth from a hardware or staff secure facility, on a pass, or in transport to or from a hardware or staff secure facility;
- major disturbance within any DYS funded location such as hostage situations, riots, natural disaster, bomb threats, emergency evacuations;
- police response to a DYS funded location;
- arrest of a DYS youth for a Grid Level 4, 5, or 6 offense or some other high profile offense;
- arrest of a staff member anywhere for any reason;
- sexual misconduct between staff and youth;
- sexual misconduct between youths;
- media involvement in a DYS incident or on DYS property;
- youth suicide attempt which results in emergency psychiatric screening or hospitalization;
- youth restraints which result in injury requiring medical treatment;
- work-related traffic accidents resulting in injury to staff or youth;
- allegations of youth abuse or neglect in a facility or community program including any instance in which a 51A report is filed with the Department of Children and Families;
- medication loss which is suspicious or unexplained;
- medication occurrence resulting in medical treatment, illness, or death;
- discovery of illegal contraband or weapons in a program;
- workplace violence or domestic violence in the workplace;
- theft from a program;
- missing program keys;
- room confinement for twelve or more consecutive hours;
- use of a safety shield; or
- discrimination, harassment or retaliation by or against any DYS staff.²⁹⁵

When a serious incident occurs, a location manager or designee must notify DYS Central Office Communications Information Center by telephone as soon as possible, but no later than the end of the next business day, must complete an electronic version of the Serious Incident Report form (and send it electronically to the Communications Information

²⁹⁴ DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008).

²⁹⁵ DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, A.1.


Center by the end of the shift, or as soon thereafter as possible.²⁹⁶

These contacts then signal a series of actions and notifications by the staff of the Communications Information Center and other DYS administrators.²⁹⁷

Department of Early Education and Care (DEEC) regulations

This section describes DEEC residential care regulations. These regulations apply to all secure programs (including detention, intake, assessment, treatment, and revocation units) and all residential programs – regardless of whether these programs are run by DYS or by a provider that contracts with DYS.

Those Alternative Lockup Programs (ALPs) that are licensed by DEEC as temporary shelter facilities also must comply with these regulations. For a further discussion of ALPs, see the section entitled “Conditions in pre-arraignment detention facilities” in Chapter 5, After the Arrest.

 **Tip for families:** If you believe that a program is not complying with DEEC regulations, you can ask DEEC to investigate.

Case management and service planning

The program must assign to each youth in care more than 72 hours a staff person responsible for coordinating implementation of the youth’s service plan and other services.²⁹⁸ The program case manager is required to, among other things, meet with the youth on a regular basis to ensure that the child’s daily needs are being met and participate in the youth’s service planning, periodic review, and release planning meetings.²⁹⁹ Service plans must be reviewed no less frequently than every six months.³⁰⁰


296 DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, B.1. a), b).

297 DYS Policy # 1.3.5(d), Serious Incident Reporting (Feb. 22, 2008), Procedures, B. 2-5.

298 102 CMR 3.06(1).

299 102 CMR 3.06(1)(a), (b).

300 102 CMR 3.05(5)(a).

 **Tip for families:** It is reasonable to expect the DYS caseworker to meet with your child at least once per week.

Complaint process

A program must have written procedures so that staff, parents, and residents may file complaints regarding the youth's care.³⁰¹ The procedure must include a mechanism to inform the complainant of the results of the decision.³⁰² The program must distribute this written complaint procedure to youths and parents prior to admission.³⁰³

Incident reporting

A program must have a procedure for documenting unusual and/or serious incidents such as behavioral incidents, runaways, serious injuries or accidents, property destruction, medication errors, medical and other emergencies.³⁰⁴

Behavior management

A program must have a description of rules for behavior management.³⁰⁵ This description must include measures for positive responses to appropriate behavior and shall define and explain the use of behavior management procedures used in the facility.³⁰⁶

Thus, if a facility uses any of the following procedures, they need to be explained in the policy: a level/point system of privileges; restrictions for misbehavior; forms of physical restraint; behavioral interventions used as alternatives to restraint; the practice of separating a resident from a group or program activity; or denial/restrictions of on-groups program services.³⁰⁷

Parents and legal guardians have a right to receive and should request a copy of the behavior management program for the facility in which a youth resides.³⁰⁸ Additionally, the program must notify the parents or legal guardians and the youth of any significant changes in behavior

301 102 CMR 3.04(3)(j).

302 102 CMR 3.04(3)(j).

303 102 CMR 3.04(3)(j)(1).

304 102 CMR 3.04(3)(h).

305 102 CMR 3.07(7)(a).

306 102 CMR 3.07(7)(a).

307 102 CMR 3.07(7)(a).

308 102 CMR 3.07(7)(e).

management procedures.³⁰⁹

Restraint

DEEC regulations provide detailed requirements regarding the use of restraint.³¹⁰ When DYS restraint regulations and/or policies also apply, these DEEC regulations should be read in conjunction with the DYS regulations and/or policies.

DEEC regulations forbid programs from using any type of restraint other than physical restraint unless the facility has obtained special permission from DEEC to do so.³¹¹

Restraint may only be used when a youth's actions demonstrate that he is dangerous to himself and there is no other way to protect the youth or others.³¹² Restraint may not be used as punishment, for convenience, or for non-compliance with rules or directions.³¹³

Only staff trained in physical restraint may restrain a youth.³¹⁴

A designated on-site administrator must be notified immediately whenever a physical restraint is begun.³¹⁵ Further, after the first five minutes of each physical restraint, steps must be initiated to contact the on-call administrative or clinical staff.³¹⁶

Staff must use the least intrusive form of restraint possible.³¹⁷ DEEC prohibits the use of choke-holds, wrestling moves, "hog-tying," or inflicting pain through pressure points.³¹⁸

If a resident needs to be restrained for longer than 20 minutes, staff must obtain approval from the chief administrative person or designee.³¹⁹ Such approval requires that the youth continues to display behavior justifying restraint.³²⁰

Staff must constantly monitor the restrained youth's physical

309 102 CMR 3.07(7)(f).

310 102 CMR 3.07(7)(j).

311 102 CMR 3.07(7)(j).

312 102 CMR 3.07(7)(j)1.

313 102 CMR 3.07(7)(j)2, 3.

314 102 CMR 3.07(7)(j)4.

315 102 CMR 3.07(7)(j)5.

316 102 CMR 3.07(7)(j)6.

317 102 CMR 3.07(7)(j)7.

318 102 CMR 3.07(7)(j)7.

319 102 CMR 3.07(7)(j)8.

320 102 CMR 3.07(7)(j) 8.

condition.³²¹ If the youth displays any sign of significant physical distress, he must be immediately released and provided any needed medical help.³²²

A restrained youth must be released as soon as it is safe to do so.³²³

Any youth restrained more than five times in any seven day period must receive a review of his clinical and behavioral needs by his case manager or clinician within three working days of the fifth restraint.³²⁴ Changes in services must be documented in the youth's treatment plan.³²⁵

The facility must document all restraints.³²⁶

Time out

DEEC regulations provide detailed requirements regarding a youth's separation from a group or program activity (referred to here as "time out").³²⁷

Programs must have guidelines for time out which state who can do time out, how long time out can last, and the process for getting required approval from the chief administrative person or designee after 30 minutes.³²⁸

Staff must be able to view the youth in time out at all times and must always be close by.³²⁹ Staff must directly observe the youth at least every 15 minutes.³³⁰

Time outs longer than 30 minutes must be documented with: length of time; reasons for time out; who approved it; and who directly observed the youth at least every 15 minutes.³³¹

Usually, a time out room may not be locked, with one exception described in the following paragraph.³³² Any room used must be physically

321 102 CMR 3.07(7)(j)9.

322 102 CMR 3.07(7)(j)10.

323 102 CMR 3.07(7)(j)11.

324 102 CMR 3.07(7)(j)13.

325 102 CMR 3.07(7)(j)13.

326 102 CMR 3.07(7)(j)14.

327 102 CMR 3.07(7)(k).

328 102 CMR 3.07(7)(k)1-3.

329 102 CMR 3.07(7)(k)4.

330 102 CMR 3.07(7)(k)5.

331 102 CMR 3.07(7)(k)6.


332 102 CMR 3.07(7)(l).

safe and appropriate to the youth served by the facility.³³³

There is an exception to the rule that a time out room may not be locked. The room may be locked if a locked detention or treatment program seeks and obtains special approval from DEEC.³³⁴ If the program receives approval, a locked time out room may be used only when necessary to protect the resident, other residents, or staff from immediate danger of physical harm.³³⁵ Locked rooms must meet all applicable state and federal regulations.³³⁶ Further, the use of the locked room may not exceed 15 minutes without approval from the chief administrative person or designee.³³⁷ Approval is required for each following 60 minute period.³³⁸ Staff must remain close to the locked room at all times, must directly observe the resident at least every 15 minutes, and must take actions to assure the youth's safety.³³⁹

Corporal punishment

Programs may not subject youths to abuse or neglect, cruel, unusual, severe or corporal punishment.³⁴⁰

 **Tip for families:** You should immediately report any instances of corporal punishment to the Department of Children and Families, which investigates allegations of child abuse. You also should report such instances to DYS and to your child's lawyer. If your child does not have a lawyer, contact one of the organizations providing legal representation listed in the Resource Guide at the end of this book.

Visits

A program must have written policies that encourage and support family visits.³⁴¹ Policies must seek to encourage healthy family relationships and individual growth and development.³⁴² They also must protect the youth, staff and program from unreasonable and unsafe

333 102 CMR 3.07(7)(m).

334 102 CMR 3.07(7)(n).

335 102 CMR 3.07(7)(n)(3)a.

336 102 CMR 3.07(7)(n)(3)a.

337 102 CMR 3.07(7)(n)(3)b.

338 102 CMR 3.07(7)(n)(3)c.

339 102 CMR 3.07(7)(n)(3)c.

340 102 CMR 3.07(7)(g).

341 102 CMR 3.07(9)(a).


342 102 CMR 3.07(9)(a)1.


intrusions.³⁴³ Policies must be distributed to the youth, parent, and persons other than a parent with custody of the child, and parents prior to admission, when possible, or within 72 hours after admission.³⁴⁴

The program must provide opportunities and encourage residents to be visited by and otherwise communicate with family and other persons. The program must ensure reasonable privacy for visits.³⁴⁵ The program must establish visiting hours which meet the needs of the residents and their parents.³⁴⁶ The program also must create procedures for youths visiting outside the facility, when appropriate.³⁴⁷

Visits may only be restricted:

- by court order (only to the extent of the court order).
- by the youth's service plan for therapeutic reasons only.
 - Such restrictions must be no greater than necessary to achieve the therapeutic purpose.
 - Those persons whose visitation is restricted or denied should receive an explanation from the program as to the reasons for the restriction.
- due to a documented safety risk to residents or staff.³⁴⁸

 **Tip for families:** This regulation means that programs should allow visits not only from parents, but also from grandparents, siblings, and other persons – related or not.

 **Tip for families:** If you or someone else is having difficulty visiting, talk to the DYS caseworker. If the caseworker is not helpful, contact the DYS district manager. If that fails, contact the DYS Regional Director. If that fails, contact the DYS Commissioner's Office. You also can seek assistance from one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Telephone

A program must have written policies that encourage and support telephone calls and other forms of communication with family, friends,

343 102 CMR 3.07(9)(a)1.

344 102 CMR 3.07(9)(a)2.

345 102 CMR 3.07(9)(b).

346 102 CMR 3.07(9)(e).


347 102 CMR 3.07(9)(f).

348 102 CMR 3.07(9)(c).

or other persons.³⁴⁹ Policies must seek to encourage healthy family relationships and individual growth and development.³⁵⁰ They also must protect the youth, staff and program from unreasonable and unsafe intrusions.³⁵¹ Policies must be distributed to the youth, parent, and persons other than a parent with custody of the child, and parents prior to admission, when possible, or within 72 hours after admission.³⁵²

Programs may not monitor or unreasonably restrict telephone communications unless there are specific therapeutic reasons for such limitations. Such therapeutic reasons must be developed in the youth's service plan and must be no greater than necessary to achieve the therapeutic purpose.³⁵³ If phone conversations are monitored, the parties to the conversations must be informed.³⁵⁴ Communication with a youth's social worker, lawyer, or clergy person may not be prohibited, restricted, or censored.³⁵⁵

The DEEC regulation does not address cell phone use.

 **Tip for families:** If you or someone else is having difficulty communicating with a youth by phone, talk to the DYS caseworker. If the caseworker is not helpful, contact the DYS district manager. If that fails, contact the DYS Regional Director. If that fails, contact the DYS Commissioner's Office. You also can seek assistance from one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Postal mail

A program must have written policies that encourage and support mail and other forms of communication with family, friends, or other persons.³⁵⁶ Policies must seek to encourage healthy family relationships and individual growth and development.³⁵⁷ They also must protect the youth, staff and program from unreasonable and unsafe intrusions.³⁵⁸ Policies must be distributed to the youth, parent, and persons other than a parent with custody of the child, and parents prior to admission, when

349 102 CMR 3.07(9)(a).

350 102 CMR 3.07(9)(a)1.

351 102 CMR 3.07(9)(a)1.

352 102 CMR 3.07(9)(a)2.

353 102 CMR 3.07(9)(h)1.

354 102 CMR 3.07(9)(h)2.

355 102 CMR 3.07(9)(i).

356 102 CMR 3.07(9)(a).


357 102 CMR 3.07(9)(a)1.

358 102 CMR 3.07(9)(a)1.

possible, or within 72 hours after admission.³⁵⁹

A youth has a right to open and send mail unread by staff with the following limitations.

- Any restrictions or censorship must be no greater than necessary to achieve the therapeutic purpose described in the individual service plan.
- Restricted or censored mail must be returned to the sender with the reasons stated.
- Staff may open and inspect a youth's mail for contraband but only in the youth's presence.³⁶⁰

 **Tip for families:** If you or someone else is having difficulty corresponding with a youth, talk to the DYS caseworker. If the caseworker is not helpful, contact the DYS district manager. If that fails, contact the DYS Regional Director. If that fails, contact the DYS Commissioner's Office. You also can seek assistance from one of the organizations that provides legal representation listed in

Grooming and hygiene

The program must provide youths, without charge, with grooming and hygiene articles necessary to meet his or her needs.³⁶¹

Clothing

The program must ensure that each youth has adequate, clean, and seasonable clothing as required for health, comfort, and physical well being and appropriate to age, sex, and individual needs.³⁶² Programs cannot require that a youth wear a uniform and must allow a youth to wear his own clothes (which the youth has participated in selecting).³⁶³

359 102 CMR 3.07(9)(a)2.

360 102 CMR 3.07(9)(g).

361 102 CMR 3.07(5)(a).

362 102 CMR 3.07(4).

363 102 CMR 3.07(4)(a)-(c).

Searches

If the program has a practice of searching the youth and/or the youth's personal belongings, the program must have written policies and procedures for such searches.³⁶⁴ The program must provide youths with a copy of the written search policy within 24 hours of his admission to the program.³⁶⁵ The program must provide parents or persons other than a parent with custody of the child a copy of the written search policy within 72 hours of admission.³⁶⁶

Religious practice

The program must make religious opportunities available to youths upon request and must respect their religious preferences.³⁶⁷

Recreation

Programs that provide care for youths for more than 72 hours must have a written plan for meeting the youths' recreational needs.³⁶⁸ Recreation must be appropriate to the age, interests and needs of each person.³⁶⁹ Recreation includes providing for free, unplanned time for a youth to pursue individual interests.³⁷⁰

Mental health treatment

DEEC requires programs to adhere to certain standards regarding mental health treatment.

Programs must conduct a mental health assessment immediately upon admission.³⁷¹ The assessment must look at potential emergency needs in the areas of medical, mental health, physical well-being, severe psychological disturbance, suspected drug overdose, alcohol intoxication and suicide risk.³⁷² If necessary to address an emergency situation, the program must transport the youth immediately to a hospital or other

³⁶⁴ 102 CMR 3.07(11)(a).

³⁶⁵ 102 CMR 3.07(11)(b).

³⁶⁶ 102 CMR 3.07(11)(c).

³⁶⁷ 102 CMR 3.06(8).

³⁶⁸ 102 CMR 3.06(7).

³⁶⁹ 102 CMR 3.06(7)(a).

³⁷⁰ 102 CMR 3.06(7)(b).

³⁷¹ 102 CMR 3.05(3)(c)1.

³⁷² 102 CMR 3.05(3)(c)1.

appropriate facility.³⁷³

With respect to mental health services, the program must be able to access services 24 hours per day, seven days per week, including crisis intervention and access to hospitalization, when necessary.³⁷⁴ Programs must provide or facilitate the provision of social, psychological and psychiatric services, as needed.³⁷⁵

Any program serving youths for over 72 hours also must have a plan for how it will provide a range of social, psychological and psychiatric services.³⁷⁶ These services must include, among others: crisis intervention; evaluation and assessment; therapy and/or counseling for individuals and groups; and clinical consultation with residents, parents or legal guardians and staff.³⁷⁷

Medical care

DEEC requires programs to adhere to certain standards regarding medical care.

The program must have a plan for meeting the medical needs of youths. Medical care for emergencies must be available 24 hour per day, seven day per week.³⁷⁸ Medical services must include: evaluation and diagnosis; treatment; consultation; and preventive health services.³⁷⁹ At the time of placement, youths must be provided with emergency medical and/or dental care if needed.³⁸⁰ If a youth is placed in a program on an emergency basis but remains in care for more than fourteen days, the program must ensure that he has had a recent medical and dental examination, and obtain the results or schedule a new one if necessary.³⁸¹ Except for youths placed on an emergency basis, the program must ensure that at the time of placement each youth has had a medical examination not more than 30 days prior to admission where possible or within two weeks after admission (unless the program has documentation of a physical exam, meeting certain guidelines, conducted less than one year prior to admission).³⁸²

In addition, the program must provide preventive health services for

373 102 CMR 3.05(3)(c)1.

374 102 CMR 3.06(3)(a).

375 102 CMR 3.06(3)(c).

376 102 CMR 3.06(3)(b).

377 102 CMR 3.06(3)(c).

378 102 CMR 3.06(4)(a).

379 102 CMR 3.06(4)(b).

380 102 CMR 3.06(4)(c).

381 102 CMR 3.06(4)(d).

382 102 CMR 3.06(4)(e).

youths including routine medical and dental examinations, immunizations, family planning information and upon request of the resident (with any required consent of parent or legal guardian or placement agency), provision of or referral for family planning devices, medication and services.³⁸³

The program must ensure that medically recommended glasses, hearing aids, prosthetic devices, corrective physical or dental devices or any equipment recommended or treatments prescribed by the examining physician are provided to the youth.³⁸⁴

The program may not require any youth to receive medical treatment or screening when the parents object due to sincerely held religious beliefs. However, the program may seek a court order for medical treatment of a youth if it believes such medical treatment is in the youth's best interest.³⁸⁵

The administration of medication

DEEC requires programs to adhere to certain standards regarding the administration of medication, including specific requirements around the administration of antipsychotic medication.³⁸⁶

The program shall have written policies and procedures regarding the prescription and administration of all medication, including antipsychotic medication.³⁸⁷ Except in an emergency, the program may not administer antipsychotic medication unless informed written consent is obtained from a parent, if available, or unless judicial approval is received.³⁸⁸ In addition, the program shall inform a youth age 12 or older, consistent with his or her capacity to understand, about the treatment, risks and any potential side effects of such medication.³⁸⁹ The program must have procedures to follow if the resident refuses to consent to administration of the medication.³⁹⁰

In an emergency situation, antipsychotic medication may be administered for treatment purposes without parental consent or prior judicial approval if an unforeseen combination of circumstances calls for immediate action and there is no less intrusive alternative to the

383 102 CMR 3.06(4)(g)1, 2, 4.

384 102 CMR 3.06(4)(h).

385 102 CMR 3.06(4)(i).

386 102 CMR 3.06(4)(k).

387 102 CMR 3.06(4)(k)1.

388 102 CMR 3.06(4)(k)3.d.

389 102 CMR 3.06(4)(k)3.e.

390 102 CMR 3.06(4)(k)3.e.

medication.³⁹¹ The treating physician must determine in his or her professional judgment that medication is necessary to prevent the immediate substantial and irreversible deterioration of a serious mental illness.³⁹² If the treating physician determines that medication should continue informed consent or judicial approval must be obtained.³⁹³

Department of Mental Health (DMH) statutes, regulations, and other provisions

A youth in DYS custody may be sent to a program run, licensed, or contracted by DMH for mental health care. For example, he could be residing on a psychiatric unit providing acute care at a private hospital; such a unit would be DMH licensed. He could reside at an IRTP, a program operated by a non-profit agency pursuant to contract with DMH. In such settings, a youth has additional rights pursuant to DMH statute and regulation. These include rights with respect to mental health admissions and commitments and basic civil rights enjoyed in such settings.

Mental health admission and commitment

In Massachusetts, an individual who is receiving treatment on a locked psychiatric unit does so pursuant to the state mental health statute and a particular civil admission or commitment status. It is important to know the legal status of a patient in order to understand his rights with respect to admission, confinement, and discharge. Parents (and a youth if he is age 16 or older) have decision-making authority at certain points in the hospitalization. These rights remain with the parents (and with a youth age 16 or older) and do not transfer to DYS upon DYS commitment because DYS assumes only physical and not legal custody of the youth.

If a youth is transferred to a locked psychiatric unit that is licensed by DMH (and almost all locked psychiatric units will be DMH licensed), the following information is applicable. (These DMH licensed units should be distinguished from secure DYS units that provide mental health services.)

Any individual, including any minor, may be involuntarily admitted to a psychiatric facility for up to three business days upon the application of certain mental health professionals or a police officer.³⁹⁴ The application for this kind of admission is known by several names, including an “emergency admission,” a “pink paper,” or a “Section 12.” The standard for such an application is that, without hospitalization, the person would

391 102 CMR 3.06(4)(k)3.f.

392 102 CMR 3.06(4)(k)3.f.

393 102 CMR 3.06(4)(k)3.f.

394 Mass. Gen. L. ch. 123, § 12(a).

“create a likelihood of serious harm by reason of mental illness.”³⁹⁵ The youth has the right to an examination prior to actual admission.³⁹⁶

A youth may not be held against his will for longer than three days after being admitted on a Section 12 pink paper, unless, prior to the end of the third day, the hospital petitions for his involuntary commitment.³⁹⁷

At any time during these three business days, the hospital may discharge the youth or petition the district court for “involuntary commitment.”³⁹⁸ At any time during the three days, the individual may apply to convert to “conditional voluntary” status.³⁹⁹ This application may be completed by the parent or guardian with authority to admit from a probate court, or by a youth age 16 or older.⁴⁰⁰ If the youth is in the custody of the Department of Children and Families (DCF), DCF may sign a “conditional voluntary” application for admission for up to 90 days; after that time, DCF must seek judicial approval.⁴⁰¹

As a conditional voluntary patient, the individual remains on this status at the hospital indefinitely, until the hospital decides to discharge the youth or the youth asks to leave by filing a “three day notice” of intent to leave.⁴⁰² This notice may be completed by the parent or legal guardian of a youth, or by a youth age 16 or older.⁴⁰³ If DCF authorized the admission, DCF may sign the three day notice.⁴⁰⁴

If a hospital petitions the district or juvenile court for involuntary commitment, the youth has the right to a lawyer (at the state’s expense if the patient cannot afford one) and a full adversarial hearing.⁴⁰⁵ The standard for commitment is that, *release would create a likelihood of serious harm to the individual or others, the individual is mentally ill and treatment cannot occur in a less restrictive placement.*⁴⁰⁶

If this standard is not met, the hospital must discharge the youth. If this standard is met, the first commitment is valid for up to six months.⁴⁰⁷ Subsequent commitments are for up to 12 months.⁴⁰⁸ During the commitment, if the hospital determines that the youth no longer needs

395 Mass. Gen. L. ch. 123, § 12(a).

396 Mass. Gen. L. ch. 123, § 12(b).

397 Mass. Gen. L. ch. 123, § 12(d).

398 Mass. Gen. L. ch. 123, § 12(c), (d).

399 Mass. Gen. L. ch. 123, § 12(c).

400 104 CMR 27.06(1)(c).

401 *D.L. v. Commissioner of Social Services*, 412 Mass. 558, 566-567 (1992); 110 CMR 11.16(4), (5).

402 Mass. Gen. L. ch. 123, § 11; 104 CMR 27.06(5).

403 104 CMR 27.06(5), (7).

404 See 104 CMR 27.06(5).

405 Mass. Gen. L. ch. 123, § 5; 12(b); see Mass. Gen. L. ch. 123, §§ 7, 8.

406 Mass. Gen. L. ch. 123, § 8(a); *Commonwealth v. Nassar*, 380 Mass. 908, 917-918 (1980).

407 Mass. Gen. L. ch. 123, § 8(d).

408 Mass. Gen. L. ch. 123, § 8(d).

treatment and care, it must discharge him.⁴⁰⁹

Admission and commitment to a locked psychiatric unit are serious events, resulting in a substantial loss of liberty and the curtailment of other rights. These restrictions of rights need to be considered when seeking appropriate mental health treatment.

Once a youth is discharged from a psychiatric facility, he will return to the placement designated by DYS.

Visits

A youth in a locked psychiatric unit has a right to receive visitors of his “own choosing daily and in private, at reasonable times.”⁴¹⁰ Visiting hours may be limited only to “protect the privacy of other persons and to avoid serious disruptions in the normal functioning of the facility or program, and shall be sufficiently flexible as to accommodate” the youth and the visitors’ individual needs and desires.⁴¹¹

A facility may suspend this right only if there is a substantial risk of serious harm to the youth or others and less restrictive alternatives would be futile.⁴¹² Any suspension must be documented in the youth’s record and may last no longer than the time necessary to prevent the harm.⁴¹³

Telephone

A youth in a locked psychiatric unit has the right to reasonable access to a telephone to make and receive confidential calls, unless making the call would be a criminal act or cause an unreasonable infringement of another’s access to the telephone.⁴¹⁴

A facility may suspend this right only if there is a substantial risk of serious harm to you or others and less restrictive alternatives would be futile.⁴¹⁵ Any suspension must be documented in the youth’s record and may last no longer than the time necessary to prevent the harm.⁴¹⁶

In addition, an individual has the absolute right to receive telephone calls from his lawyer or legal advocate, physician, psychologist, clergy

409 Mass. Gen. L. ch. 123, § 4.

410 Mass. Gen. L. ch.123, § 23(c).

411 Mass. Gen. L. ch.123, § 23(c).

412 Mass. Gen. L. ch.123, § 23.

413 Mass. Gen. L. ch.123, § 23.

414 Mass. Gen. L. ch.123, § 23(a).

415 Mass. Gen. L. ch.123, § 23.

416 Mass. Gen. L. ch.123, § 23.

member or social worker at any reasonable time, regardless of whether the youth initiated or requested the call.⁴¹⁷

Postal mail

A youth in a locked psychiatric unit has a right to send and receive “sealed, unopened, uncensored mail.”⁴¹⁸ If the youth is present, staff may open and check mail for contraband, but may not read it.⁴¹⁹ The superintendent, director, or designee of the superintendent or director must document with specific facts the reason for opening the mail.⁴²⁰

Access to outside advocates

A youth in a locked psychiatric unit has the right to be visited (even outside normal visiting hours) by his lawyer or legal advocate, as well as by his physician, psychologist, clergy person or social worker, regardless of who initiates the visit.⁴²¹

A youth also has the right to have his lawyer (or legal advocate), with appropriate consent, access the youth’s record, communicate with clinical staff, and attend meetings regarding treatment or release planning which the youth is entitled to attend.⁴²²

A youth also has the right to benefit from “reasonable access by lawyers and legal advocates, including those of the Massachusetts Mental Health Protection and Advocacy Project, the Committee for Public Counsel Services, and the Mental Health Legal Advisors Committee,” so that they may “provide free legal services.”⁴²³ Upon admission and upon request, facilities must provide the name, address and telephone numbers of these legal agencies and must assist individuals in contacting them.⁴²⁴ These agencies may conduct unsolicited visits and distribute educational materials at times the facility designates as “reasonable.”⁴²⁵

Privacy

A youth in a locked psychiatric unit also has the right to a humane environment including living space which ensures “privacy and security

417 Mass. Gen. L. ch.123, § 23(e).
418 Mass. Gen. L. ch.123, § 23(b).
419 Mass. Gen. L. ch.123, § 23(b).
420 Mass. Gen. L. ch.123, § 23(b).
421 Mass. Gen. L. ch.123, § 23(e).
422 Mass. Gen. L. ch.123, § 23(e).
423 Mass. Gen. L. ch.123, § 23(e).
424 Mass. Gen. L. ch.123, § 23(e).
425 Mass. Gen. L. ch.123, § 23(e).

in resting, sleeping, dressing, bathing and personal hygiene, reading and writing and in toileting.”⁴²⁶ This provision does not mean that a youth has the right to a private bedroom.

⁴²⁶ Mass. Gen. L. ch. 123, § 23(d).

CHAPTER 11:

THE SITUATION FOR GIRLS

Girls in DYS.....	11.2
Medical issues	11.3
Pregnancy	11.3
Mental health services	11.3
Girls transitioning back to the community	11.4
Resources for girls and advocates	11.5

THE SITUATION FOR GIRLS

Girls in DYS

Historically, the number of girls in DYS has been quite low. In recent years, however, the number of girls involved with DYS increased somewhat dramatically. That development was consistent with national trends.¹ More recently, however, the numbers of girls detained and committed in DYS have actually declined.² Overall, between 2000 and the end of 2009, the number of females on the DYS committed caseload declined by 185 (45%).³

During 2009, 319 girls were admitted to pre-trial in DYS detention, 17% of all youth admitted to pre-trial detention.⁴ In 2010, 226 girls were on the committed caseload of DYS, 16% of all youth on the DYS committed caseload.⁵

When girls are committed to DYS, they generally require less secure facilities than do boys. In 2010 DYS reported that most of the girls committed at that time were at grid levels 1 and 2 (minimum security), while most boys were at grid levels 2 or 3.⁶

DYS has created gender-specific services for girls to respond to the increase in the female population. The situation in Massachusetts regarding girls and DYS is consistent with national trends.⁷ There is growing recognition that girls have special issues that need attention when they are placed in DYS confinement.

In June of 2007, DYS opened a 40-bed facility for girls on the grounds of Westborough State Hospital called the Zara Cisco Brough Center. The Center houses the Pelletier Assessment Program, a 25-

1 Youth Advocacy Project Community Notebook, The Girls Edition, A Resource Guide to Programs for Girls in the Boston Area (2007), <http://www.youthadvocacyproject.org/pdfs/Girls%20Edition%20Fall%202007%20PDF.pdf>.

2 For example, during 2009 the number of girls on the committed caseload of DYS decreased by 5.4%. Executive Office of Health and Human Services, Annual Population Analysis - Committed Caseload: 2010 analysis of Department of Youth Services committed caseloads from 2000 to 2010, Figure 5, <http://www.mass.gov/eohhs>.

3 Executive Office of Health and Human Services, Annual Population Analysis - Committed Caseload: 2010 analysis of Department of Youth Services committed caseloads from 2000 to 2010, Figure 6, <http://www.mass.gov/eohhs>.


4 Executive Office of Health and Human Services, Annual Population Analysis - Detention Admissions: Analysis of DYS detentions from 2000 to 2009, Figure 2, <http://www.mass.gov/eohhs>.

5 Executive Office of Health and Human Services, Annual Population Analysis - Committed Caseload: 2010 analysis of Department of Youth Services committed caseloads from 2000 to 2010, Figure 6, <http://www.mass.gov/eohhs>.

6 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 2.

7 Youth Advocacy Project Community Notebook, The Girls Edition, A Resource Guide to Programs for Girls in the Boston Area (2007), <http://www.youthadvocacyproject.org/pdfs/Girls%20Edition%20Fall%202007%20PDF.pdf>.

bed assessment unit for girls. All girls entering DYS will be assessed at this facility. (The Center also contains a hardware secure treatment unit for girls, discussed later in this chapter) However, DYS' staff secure, (residential) group care and detention facilities for girls are not centralized, but are located in the various regions of the state.


 **Tip for families:** If you are a parent of a DYS girl, pay special attention to ensure that DYS is meeting your daughter's needs.

Medical issues

Girls involved with DYS often have unaddressed medical problems. DYS seeks to identify such programs during assessment and develop a treatment plan to respond to them.

Pregnancy

If a girl is pregnant while in a DYS facility, she can consent to her own medical care (even if under age 18).⁸ However, her consent is not sufficient for abortion or sterilization procedures.⁹ If your daughter wants an abortion, and she is under age 18, both her parents (unless there is only one available parent or only one parent holds custody) must give written consent to the abortion.¹⁰ Alternatively, she may obtain permission from a judge.¹¹

 **Tip for families:** For girls who want to seek judicial permission for an abortion, the Planned Parenthood League of Massachusetts, reachable at (800) 230-PLAN or <http://www.pplm.org>, will connect youth with a lawyer who can file a motion in court and assist the youth in appearing before the judge.

Mental health services

Some girls in DYS require specialized mental health services. As many as three-quarters of the girls in DYS custody exhibit some form of stress disorder or mental illness. Compared to boys, girls in DYS tend to have higher incidences of low self esteem, depressive disorder, anxiety disorder, eating disorders, self-mutilation, and suicidal attempts. Many girls involved in DYS suffer trauma from past sexual or physical abuse.

8 109 CMR 11.06(1).

9 109 CMR 11.06(1).


10 109 CMR 11.07.

11 Mass. Gen. L. ch. 112, § 125.

DYS has a small number of residential facilities for DYS girls with mental illness. Further, DYS has one locked treatment facility for committed girls -- the Fay A. Rotenberg School for Girls located at DYS's new facility for girls, the Zara Cisco Brough Center, on the grounds of Westborough State Hospital. This placement is for girls who have been in trouble with DYS before and have been found delinquent of serious crimes. The Rotenberg School has space for 16 girls.¹² The Department of Mental Health has other programs for girls.

DYS also has an independent transitional living program for girls ages 16 to 21.

With respect to specialized services for girls, DYS is increasingly using Dialectical Behavior Therapy (DBT), a therapy program which is used to help overcome trauma from sexual and/or physical abuse.

 **Tip for families:** If you are having difficulty obtaining services for a girl confined in a DYS facility, contact the youth's DYS caseworker or the caseworker manager/supervisor. If this is not productive, you might contact the DYS Regional Director or DYS's Director of Female Services in DYS's Central Office in Boston.

Girls transitioning back to the community

DYS recognizes the need to provide specialized services to girls as they transition back to the community. As girls return to the community, they face issues including drug addiction, mental health problems, familial sexual trauma, abusive relationships, gang violence and homelessness.¹³ The goals of DYS' work include reducing the recidivism rates and helping girls access appropriate community-based services.

DYS has pursued these goals in each region.¹⁴ For example, the Boston Girls' Program serves girls returning from DYS custody to the community. Roxbury Youthworks, Inc. operates the program out of the DYS Boston Girls' District Office in Roxbury. Similarly, in Springfield, the Young Women's Center serves girls in DYS' Western Region.

12 See DYS, State Breaks Ground on New DYS Girls' Facility in Westboro (Nov. 18, 2005), <http://www.mass.gov/dys>.

13 Maria Cheevers and Erin Trahan, "The Female Focus Initiative: Boston's First Re-entry Program for Girls," in Girls' Coalition Newsletter (Fall 2002/Winter 2003), http://www.girlscoalition.org/uploads/issues/FALL_02_WINTER_03.pdf, at 8, 9.

14 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

Resources for girls and advocates working with girls involved with DYS

- The College of Public and Community Service at the University of Massachusetts Boston published a booklet in 2001 called “Your Legal Rights: A handbook for Teen Girls in Massachusetts.”¹⁵
- The Youth Advocacy Project has developed a Community Notebook, a resource guide for girls in the juvenile justice system, available at <http://www.youthadvocacyproject.org/JDN%20girls.htm#notebook>.¹⁶ While designed to aid lawyers who are working with girls in the Boston area who have not yet been locked up or committed, the notebook is a good resource for any Massachusetts advocate working with girls in and out of confinement.
- The Juvenile Rights Advocacy Project (JRAP) at Boston College School of Law specializes in cross-system legal representation of girls involved in the juvenile justice system. The project serves the Roxbury and Dorchester areas, as well as Lowell. JRAP can be reached at (617) 552-2350 or <http://www.bc.edu/schools/law/jrap/>. JRAP has published Consent to Treatment by Minors in Massachusetts: A Guide for Practitioners (2006), available at http://www.bc.edu/schools/law/jrap/meta-elements/pdf/jrap_medical_consent.pdf. The guide covers, among other topics, pregnancy and family planning services.

¹⁵ The guide is no longer available from the University of Massachusetts, but a copy is on file at MHLAC.

¹⁶ The Youth Advocacy Project also has compiled other resources for girls in the juvenile justice system, available at <http://www.youthadvocacyproject.org/JDN%20girls.htm>.

CHAPTER 12:

MEDICAL SERVICES DURING CONFINEMENT

Right to medical services	12.3
Intake and medical evaluation of youths detained in DYS facilities.....	12.4
Intake screening	12.4
Medical evaluation.....	12.4
Intake, medical evaluation, and full assessment of committed youths.....	12.5
Intake screening	12.5
Medical evaluation.....	12.5
Full assessment.....	12.5
Annual examinations of committed youths.....	12.7
Further rights of detained or committed youths to screening upon placement in program	12.7
Right to consent to and refuse medical, mental health and substance abuse treatment for youths in general.....	12.8
Right to consent to and refuse treatment for DYS involved youths.....	12.8
Reporting medical information to parents or legal guardians.....	12.10
How DYS delivers health services in secure programs	12.10
Access to medical specialists and promoting	

continuity of care.....	12.11
Medication.....	12.11
Isolation for medical reason.....	12.12
Health care insurance programs.....	12.12
Medicaid	12.13
<i>Medicaid generally.....</i>	<i>12.13</i>
<i>Entering DYS custody</i>	<i>12.13</i>
<i>When DYS provides services itself versus when DYS relies on MassHealth services.....</i>	<i>12.14</i>
<i>No federal Medicaid funds for inmates of public institutions</i>	<i>12.15</i>
<i>Choosing a health plan once enrolled in Medicaid (MassHealth).....</i>	<i>12.15</i>
Private health insurance.....	12.17
Other state agency health care services.....	12.17

MEDICAL SERVICES DURING CONFINEMENT

This chapter should be read in conjunction with Chapter 13, Mental Health and Substance Abuse Services During Confinement. For youths in programs licensed by the state Department of Early Education and Care (DEEC), this chapter should also be read in conjunction with the explanation of DEEC regulatory requirements regarding medical care, discussed in Chapter 10, Overview of Rights During Confinement.

This chapter does not apply to youths held in pre-arraignment detention facilities known as Alternative Lockup Programs (ALPs).

Right to medical services

Youths in state custody have a right under the U.S. Constitution to adequate basic care, medical care, and protection from harm.¹

DYS detained and committed youths have the right to receive medical services during such confinement.² Medical services include both diagnosis and treatment and include both physical and mental health services.³ Treatment for routine ailments may be provided at the DYS facility or at a community medical facility.⁴

While DYS provides medical care for detained youth,⁵ in some respects, DYS has different obligations for detained youth than it does for committed youth, as discussed below.

For youth in facilities licensed by DEEC, this chapter should be read in conjunction with the explanation of state DEEC regulatory requirements regarding medical care, discussed in Chapter 10, Overview of Rights During Confinement.

1 *Youngberg v. Romeo*, 457 U.S. 307 (1982). Conditions of confinement for youth in custody -- who have not been convicted of a crime -- are governed by the Due Process Clause of the Fourteenth Amendment, and not the less protective Eighth Amendment. *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984).

2 Mass. Gen. L. ch. 18A, § 2. DYS regulation 109 CMR 11.23(1)(a) requires DYS to provide detained youth with "minimal medical services," but the U.S. Constitution likely requires a higher level of services than that standard.

3 Mass. Gen. L. ch. 18A, § 2.

4 109 CMR 11.23(3).

5 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3.

Intake and medical evaluation of youths detained in DYS facilities

Intake screening

At the time of arrival of a detained youth at DYS, DYS must do a preliminary clinical assessment to detect urgent psychiatric and medical needs and suicidal ideation, as well as conduct a visual inspection for signs of trauma, recent surgery, abscesses, open wounds, needle punctures, jaundice and communicable diseases.⁶

DYS also seeks to determine whether the youth has any current health problems (acute or chronic) or is currently being treated with medication which needs to be continued while in custody.⁷ In addition, DYS offers all detained youths a screening for sexually transmitted diseases.⁸

This assessment, called an intake assessment or screening, should be performed by a licensed provider.⁹ DYS conducts this assessment within 24 hours of a youth's admission.¹⁰

Medical evaluation

Within 30 days of the youth's arrival at DYS, DYS conducts a medical evaluation.¹¹ Typically, this evaluation begins after the youth's 17th day in detention and will be completed by day 30 if the youth is still in detention at that time.¹²

When the intake screening and/or medical evaluation indicate the need for more tests or for treatment, and when the youth is transferred within the DYS system, this medical information travels with the youth.¹³

6 109 CMR 11.23(1).

7 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

8 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

9 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

10 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

11 10 109 CMR 11.22(1) (for committed youths).

12 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

13 109 CMR 11.23(4).

Intake, medical evaluation, and full assessment of of committed youths

Intake screening

As DYS does for detained youths, DYS performs an intake screening of all committed youths.¹⁴

Medical evaluation

In addition, if the committed youth has not had a complete medical evaluation (because he had not remained in detention for sufficient time for such evaluation to be completed), he will have that evaluation on the assessment unit. DYS regulation requires that this evaluation occur within 30 days of commitment to DYS.¹⁵ However, DYS will complete it within 30 continuous days of confinement to DYS (so a youth who has been detained prior to commitment may have the evaluation completed prior to the regulatory deadline).¹⁶

Full assessment

In addition, DYS must thoroughly evaluate each committed youth when he enters DYS custody in order to determine what services the youth needs.¹⁷

To meet this requirement, as soon as a bed in an assessment unit is available, the youth is moved there and DYS conducts a full assessment of the committed youth.¹⁸ Assessment consists of an examination of the youth's medical, dental, psychiatric, family, behavioral, systemic and educational history.¹⁹

Information from the assessment is presented at the staffing where the treatment team develops a treatment plan.²⁰ For further discussion of what happens on the assessment unit, see the section

14 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

15 109 CMR 11.22(1).

16 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).

17 Mass. Gen. L. ch. 120, § 5(a)-(c) (the statutory provision terms this evaluation an "examination").

18 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

19 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

20 See 109 CMR 11.22(1).

entitled “Assessments of committed youth” in Chapter 7, Commitment and Assessment.

In addition, DYS staff must take certain steps upon the commitment of a youth to ensure continuity of care.²¹ Among these requirements, medical staff must obtain past medical records, continue or reevaluate any current medical treatment without interruption, continue specialty treatment in collaboration with or, if possible, by the same community provider who last treated the youth, and provide treatment information to the parent or legal guardian.²²

In order for DYS to ensure such continuity, it is important for parents and legal guardians to provide DYS with as much medical information as possible. Parents or legal guardians must complete the DYS Medical Consent Form to enable DYS to obtain the medical records and speak with the current health providers and medication prescribers to continue any existing treatment.²³ Committed youths may not be able to access their community health care provider while in a secure setting.²⁴

Committed youths receive a complete medical history and physical exam by a physician, nurse practitioner or physician assistant unless already completed during detention.²⁵ Immunization status is reviewed and immunizations are updated as required.²⁶ Youths also are screened for tuberculosis, sexually transmitted diseases, and for other diseases indicated by their history.²⁷ A dental examination and treatment also are scheduled as soon as possible after commitment.²⁸

21 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, C.

22 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, C.1, 2, 3, 4.

23 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).


24 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

25 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

26 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23. The Department provides all immunizations recommended for adolescents by the Massachusetts Department of Public Health. DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

27 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23.

28 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 42.

 **Tip for families:** If DYS does not conduct an evaluation of your child after he is committed OR if DYS does not re-evaluate your child within one year of a previous evaluation, your child may petition the court for an order of discharge. Mass. Gen. L. ch. 120, § 5(d). If the order is granted, your child will no longer be in DYS custody. However, the fact that your child was not evaluated according to the law does not guarantee that he will be discharged, but only that he has the right to request discharge. Mass. Gen. L. ch. 120, § 5(d).

This process of seeking an order of discharge is rarely used and is not likely to achieve that goal, but it may get your child's situation some needed attention. If you believe that your child's circumstances warrant such a petition, contact your child's original lawyer or the Juvenile Defense Network at (617) 445-5640.

Annual examinations of committed youths

In addition, DYS must conduct periodic examinations of all committed youths.²⁹ These examinations may be made as frequently as DYS considers desirable, but must occur at least annually.³⁰ DYS reports that a medical history and physical exam by Health Services staff are repeated annually as long as the client is in an out-of-home placement.³¹

Further rights of detained or committed youths to screening upon placement in program

Upon being placed in any program, each detained or committed youth must receive a medical, psychiatric and dental screening.³² This evaluation must occur within seven days of arrival.³³ Staff must assist youths in contacting parents or guardians after the intake screening is complete.³⁴

DYS staff must take certain steps to ensure continuity of care during the intake screening process.³⁵ Included among these steps is the requirement that clinical staff telephone parents or legal guardians to confirm or clarify the nature of any current medical or psychiatric problem

²⁹ Mass. Gen. L. ch. 120, § 5(b).

³⁰ Mass. Gen. L. ch. 120, § 5(b).

³¹ DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 23; Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

³² DYS Policy # 2.1.1(c), Intake Procedures (Jan. 1, 1999).

³³ DYS Policy # 2.1.1(c), Intake Procedures (Jan. 1, 1999).

³⁴ DYS Policy # 2.1.1(c), Intake Procedures (Jan. 1, 1999), Procedures, B.7.

³⁵ DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, B.

and obtain the name and telephone number of anyone currently treating the youth.³⁶ Staff must obtain permission to speak with providers and obtain treatment records.³⁷

Right to consent to and refuse medical, mental health and substance abuse treatment for youths in general

In Massachusetts, except in very limited emergency situations involving life saving treatment, a competent adult has the right to decide his or her course of treatment and, more specifically, to accept or refuse treatment.³⁸ This right includes mental health and substance abuse treatment.

Before administering any kind of treatment, including medication, a physician must obtain the adult's informed consent.³⁹ An adult is presumed competent to make treatment decisions.⁴⁰ With certain exceptions, a minor (a person under age 18) is considered incompetent by age.

Except in the case of incompetence by age (a person under 18), incompetence to consent to or refuse treatment only may be established by a court determination.⁴¹

Except in special circumstances, a parent or legal guardian has the capacity to provide informed consent for a minor.⁴² Any individual with the capacity to consent to treatment also enjoys the capacity to withdraw that consent at any time.

Right to consent to and refuse treatment for DYS involved youths

Informed consent is required for all medical care except for care given in an emergency.⁴³

36 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, B.3.

37 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, B.4.

38 See, e.g., *Shine v. Vega*, 429 Mass. 456, 463 (1999); *Guardianship of Doe*, 411 Mass. 512, 517 (1992); *Harnish v. Children's Hosp. Med. Ctr.*, 387 Mass. 152, 154-155 (1982).

39 Mass. Gen. L. ch. 111, § 70E.

40 *Rogers v. Comm'r of the Dep't of Mental Health*, 390 Mass. 489, 497 (1983).

41 *Rogers v. Comm'r of the Dep't of Mental Health*, 390 Mass. 489, 497 (1983).

42 There are two special circumstances. First, an emancipated minor may consent to or refuse medication as if he were an adult. Mass. Gen. L. ch. 112, §12F. Second, a "mature minor" is one who may consent to or refuse his own medical treatment when the best interests of the minor are served by not notifying the parents or guardians of the medical treatment, and the minor is determined capable of giving informed consent to the treatment. *In re Rena*, 46 Mass. App.Ct. 335, 337 (1999); *Baird v. Att'y Gen.*, 371 Mass. 741, 754 (1977).

43 DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Policy section.

In a non-emergency, consent to routine medical care may be given by the youth. If a youth has no living parent and no legal guardian,⁴⁴ DYS will arrange for the Department of Children and Families to file a Care & Protection petition or guardianship to secure consent to routine care.⁴⁵ Routine medical care includes a long list of procedures, such as medical tests, preventative care, dental care, treatment of physical illnesses (including sexually transmitted diseases), and drug dependency treatment.⁴⁶

In addition, a youth in DYS or a provider-run facility, even if under age 18, who is pregnant or believes herself to be pregnant may give consent to her own medical and dental care (except abortion or sterilization).⁴⁷ Similarly, a youth in DYS or a provider-run facility, even if under age 18, who reasonably believes he is suffering from or came in contact with any sexually transmitted disease, may consent to his own medical care related to the diagnosis or treatment of such disease.⁴⁸ Last, youth age 12 or older in DYS or provider-run facilities may give consent to treatment for drug dependency.⁴⁹ No other consent, such as parental consent, is needed in these three situations.

In a non-emergency, to administer extraordinary medical treatment to a youth under age 18, DYS must obtain parental or guardian consent or seek prior judicial approval.⁵⁰ For psychotropic medications to be administered to a DYS client under age 18, parents or legal guardians must complete a separate consent form.⁵¹

In some cases, however, parental or guardian authority may have been limited by state law or by an agreement between parents and the Department of Children and Families.⁵² Determining whether care constitutes “extraordinary medical treatment” requires examining a number of factors outlined in DYS regulations.⁵³ Such care includes all medications prescribed for psychiatric or behavioral treatment.⁵⁴

44 DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Policy section; *see also* 109 CMR 11.05(2).

45 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007); *see also* Mass. Gen. L. ch. 120, § 23; DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Policy section.

46 109 CMR 11.05(1); *see also* DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Procedures, A.4.

47 109 CMR 11.06.

48 109 CMR 11.10(2).

49 109 CMR 11.08.

50 109 CMR 11.17(2), (3); *see also* DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Policy section (in a non-emergency, only a parent or guardian (and the youth if age 18 or older) may consent to elective or invasive medical care).

51 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

52 109 CMR 11.17(3).

53 109 CMR 11.17(1).

54 DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Procedures, A.3.

In an emergency, medical providers may administer medical treatment without consent from the youth, the youth's parent or DYS.⁵⁵ A medical emergency is a situation where failure to take immediate action would place a child at substantial risk of imminent death, or serious emotional or physical injury.⁵⁶ In practice DYS will likely be with the youth at the time emergency treatment is being sought, the medical provider will ask DYS to consent to the treatment, and DYS will provide that consent.⁵⁷

Reporting medical information to parents or legal guardians

DYS must inform parents or legal guardians of a youth under age 18 if there is a significant change in the youth's medical treatment or conditions.⁵⁸ Such changes include: refusal to accept medical treatment; change or discontinuation of psychotropic medication; and significant deterioration of a youth's medical condition.⁵⁹

How DYS delivers health services in secure programs

DYS provides health services in secure programs through contracts with hospitals or health care agencies in each DYS region:

- Metro Region -- Boston Children's Hospital;
- Central Region -- University of Massachusetts Medical School;
- Northeast Region -- Lowell Community Health Center;
- Southeast Region -- Health Imperatives;
- Western Region -- Baystate Medical Center.⁶⁰

As of 2007, these contracts provided primary care delivered on-site by health staff during daytime hours, Monday through Friday, and Saturday mornings.⁶¹

All DYS clients have access to a sick call at least three days per

55 109 CMR 11.04(3); DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Policy section.

56 109 CMR 11.04(1); *see also* DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Procedures, A.2 (emergency treatment is medical, dental or psychiatric treatment that is recommended immediately and that, if postponed, may result in permanent injury, loss of function, or death).

57 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

58 DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Procedures, B.9.

59 DYS Policy # 2.5.4, Authorization for Medical Care (Mar. 14, 2000), Procedures, B.9.

60 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 42; Telephone communication from Sandra Stearns, DYS to MHLAC (Nov. 10, 2009).

61 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 42.

week.⁶² They also are offered HIV counseling and testing.⁶³

Access to medical specialists and promoting continuity of care

DYS policy is to preserve continuity of medical care whenever possible.⁶⁴ The Health Services staff associated with the youth's program determines the need for and chooses a qualified medical specialist.⁶⁵ When possible and safe to do so, DYS shall continue pre-existing relationships with medical specialists.⁶⁶ Moreover, when a newly committed youth has a chronic illness, DYS policy is to preserve pre-existing medical relationships whenever possible.⁶⁷ DYS will determine how to transport and maintain security for a client to access specialty care.⁶⁸

Medication

Medication prescribers prescribing new medication to the youth must explain to him certain information: the purpose of the medication; the benefits and risks of taking (and not taking) the proposed medication; how to take the medicine; cautions and possible side effects; and alternative treatments.⁶⁹

62 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 42.

63 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 42.

64 DYS Policy # 2.5.6, Access to Diagnostic Services, Consultants, and Continuity of Care (Aug. 25, 2000), Policy section.


65 DYS Policy # 2.5.6, Access to Diagnostic Services, Consultants, and Continuity of Care (Aug. 25, 2000), Policy section.

66 DYS Policy # 2.5.6, Access to Diagnostic Services, Consultants, and Continuity of Care (Aug. 25, 2000), Policy section.

67 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Policy section.

68 DYS Policy # 2.5.6, Access to Diagnostic Services, Consultants, and Continuity of Care (Aug. 25, 2000), Policy section; Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

69 DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), E.2.

 **Tip for families:** It is in most cases good practice for doctors working for DYS to speak with a youth's family and/or the youth's treating physician/psychiatrist in the community before adding or changing medications. However, once parents or legal guardians provide consent to routine medical care, prescribers may add new medications (excluding medications that constitute extraordinary medical treatment such as psychotropics) or adjust existing medications without first having such conversations. Similarly, once a parent or legal guardian (or, in certain circumstances, the youth) provides consent to extraordinary treatment or a court-ordered treatment plan is obtained, a doctor may act (within the limits of the consent or court order), without further consultation with family or the youth's community clinician.

The topic of medication is discussed in greater detail in Chapter 13, Mental Health and Substance Abuse Services During Confinement.

Isolation for medical reason

If a youth becomes ill and is contagious (that is, he can give the sickness to others), DYS may keep him in isolation, apart from the other children.⁷⁰ However, the staff must observe the ill youth during this time to make sure that there are no psychological effects of this isolation.⁷¹ Such observation is in accordance with the DYS Suicide Assessment Policies.⁷²

If the parent or legal guardian of a youth under age 18 does not consent to treatment for a disease that is considered dangerous to the public health, a court order will be sought to force treatment.⁷³ Similarly, if a youth age 18 or older does not consent to treatment for such a disease, he may be brought to court in order to force treatment.⁷⁴

Health care insurance programs

This brief discussion covers both public and private health insurance programs. This section focuses most closely on one type of publicly-funded program, Medicaid. For more information on health insurance, including Medicaid, see Chapter 18, Health Insurance and Other Health Care Funding Sources in the Community.

70 109 CMR 11.27.

71 109 CMR 11.27.

72 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

73 See 109 CMR 11.09(2).

74 See 109 CMR 11.09(2).

Medicaid

Medicaid generally

Medicaid is a government program that pays for health care for uninsured or underinsured children from low income families and for children with disabilities. In Massachusetts, the Medicaid program is called “MassHealth.” The state agency responsible for administering the Medicaid program is the Executive Office of Health and Human Services (EOHHS). The division within EOHHS that administers Medicaid is called the Office of Medicaid. For more information on MassHealth, see <http://www.mass.gov/masshealth/>.

Entering DYS custody

Upon entering DYS custody, DYS detained and committed youths are enrolled in MassHealth.⁷⁵ To accomplish this, DYS sends MassHealth, on a daily basis, the names of youths that have entered DYS custody.⁷⁶ MassHealth responds by giving each youth what is called “presumptive eligibility.”⁷⁷ Each youth is enrolled as a family of one with no income.⁷⁸ All enrolled youths receive a MassHealth number.⁷⁹

Enrollment occurs whether or not the youth had MassHealth or some other type of health insurance prior to his involvement with DYS. As long as a youth remains detained by or committed to DYS, he or she remains enrolled in MassHealth.

Once a detained or committed youth is enrolled in MassHealth, MassHealth determines which type of MassHealth the youth will have.⁸⁰ Currently, MassHealth enrolls detained and committed youths in “MassHealth Standard.”⁸¹ This categorization dictates the level of coverage that Medicaid provides. Enrollment in MassHealth Standard means that behavioral health, medical, and dental care are all covered services.⁸²

75 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.

76 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

77 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

78 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

79 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

80 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 5.

81 DYS correspondence to MHLAC (Jan. 14, 2008); Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

82 DYS correspondence to MHLAC (Jan. 14, 2008).

When DYS provides services itself versus when DYS relies on MassHealth services

In DYS hardware and staff secure settings, many of the medical and behavioral health care services are provided on site, by DYS staff or staff of providers who contract with DYS. When such staff are available, DYS relies on them for services, as opposed to pursuing MassHealth funded services. In such cases, it is DYS who pays for the care.

For example, in hardware secure settings, DYS and its contracted providers have on-site medical and behavioral health care.⁸³ Similarly, in staff secure settings, DYS provides behavioral health care.⁸⁴ In either type of setting, if a youth requires a mental health assessment, DYS conducts and pays for that.

However, in some staff secure settings, DYS providers use local, off-site medical providers, for which they bill MassHealth.⁸⁵ More generally, in staff secure settings, if a youth needs a MassHealth service for medical care, that can be arranged.⁸⁶

One other MassHealth service that might be accessed by committed youths in DYS staff secure facilities is Mobile Crisis Intervention, which provides emergency evaluation and intervention 24/7 at the youth's location in the event of a behavioral health crisis.⁸⁷ While in general, as stated above, DYS provides behavioral health services on site in DYS staff secure facilities, DYS will access Mobile Crisis Intervention when additional intervention, including level of care assessment, is needed.⁸⁸

There are some medical services that DYS does not provide in any of its settings. These services include pharmacy services (including for behavioral health medications) and acute medical care (including behavioral health care) requiring hospital services.⁸⁹ (DYS has no hospital among its facilities.) Thus, DYS does not provide these services, but obtains them from outside providers. MassHealth pays for these services.

83 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

84 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

85 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

86 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

87 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

88 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

89 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

No federal Medicaid funds for inmates of public institutions

One reason DYS provides many medical services on site is that federal law prohibits the federal government from providing *federal* Medicaid dollars to “an inmate of a public institution.”⁹⁰ (MassHealth services are funded by state and federal dollars; this prohibition applies only the federal dollars.) DYS has interpreted this prohibition to mean that youths confined to its hardware secure facilities cannot access federal Medicaid dollars.⁹¹ All DYS detention facilities and many facilities for committed youth are hardware secure. Thus, the prohibition affects DYS involved youths while they are in such settings. However, despite being unable to access federal Medicaid reimbursement, DYS involved youths in a hardware secure setting remain enrolled in MassHealth.⁹²

Further, youths who are held by DYS who leave hardware secure settings such as for emergency medical care are not subject to this restriction.⁹³ For example, youths taken to a hospital after arrest but before entering a DYS detention facility and youths transferred from DYS detention to a hospital for treatment do not qualify as inmates and can access federal Medicaid dollars upon enrollment in MassHealth.⁹⁴ Similarly, youths in DYS detention facilities awaiting foster care or group home placement may not be subject to this restriction.⁹⁵

Additionally, once a youth moves from a DYS hardware secure setting to a DYS staff secure setting, he can access federal Medicaid dollars to pay healthcare expenses.⁹⁶ Thus, committed youths in hardware secure DYS facilities are not eligible to receive federal MassHealth dollars, but committed youths in staff secure facilities may receive such dollars.

Choosing a health plan once enrolled in Medicaid (MassHealth)

After a youth is detained or committed and enrolled in MassHealth Standard, the youth has a choice of insurance plan: MassHealth’s Primary Care Clinician (PCC) plan or one of MassHealth’s Managed Care Organization (MCO) plans.

90 42 U.S.C. § 1396d(a)(xiii)(28)(A); 42 CFR § 436.1005(a)(1); 42 CFR § 435.1010.

91 See DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

92 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

93 Youth Law Center, Medicaid for Youth in the Juvenile Justice System (Aug. 2006) at 3 (on file with MHLAC); Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

94 See 42 CFR § 436.1005(a)(1); 42 CFR § 435.1010; Youth Law Center, Medicaid for Youth in the Juvenile Justice System (Aug. 2006) at 3 (on file with MHLAC).

95 See 42 CFR § 436.1005(a)(1); 42 CFR § 435.1010; Youth Law Center, Medicaid for Youth in the Juvenile Justice System (Aug. 2006) at 3 (on file with MHLAC).

96 Youth Law Center, Medicaid for Youth in the Juvenile Justice System (Aug. 2006) at 3 (on file with MHLAC).

The PCC plan is state-managed and available state-wide. The state contracts with a private company, the Massachusetts Behavioral Health Partnership (the “Partnership” or “MBHP”) to administer coverage of these services. (The Department of Mental Health has a role in overseeing the Partnership’s management of these behavioral health services.) Under this arrangement, MassHealth pays the Partnership a monthly fee for each member of the PCC plan, and the Partnership establishes a network of behavioral health providers, authorizes services, and pays providers.⁹⁷ Under this arrangement, medical services other than behavioral health services continue to be paid for directly by Medicaid and are provided through MassHealth’s network of clinicians.

The other insurance plans available to DYS involved youth are offered by MCOs covering certain geographic areas. These MCOs are Fallon, Neighborhood Health Plan, Boston Medical Center (BMC) HealthNet, Network Health, and Health New England. BMC HealthNet and Network Health manage their own mental health and substance abuse benefits. Fallon and Neighborhood Health, contract with Beacon Health Strategies to managed mental health and substance abuse coverage. Health New England contracts with MBHP to managed those types of coverage.

If a youth doesn’t select one of these PCC or MCO insurance plans upon DYS commitment and enrollment in MassHealth, he will automatically be enrolled in a PCC plan. In that case, his behavioral health care will be managed by the Massachusetts Behavioral Health Partnership. Medical services are paid for directly by Medicaid and are provided through MassHealth’s network of clinicians.⁹⁸


DYS involved youths who are enrolled in the PCC plan are treated differently than members of the general population who select the PCC plan. While normally, enrollees who select the PCC plan must select a Primary Care Provider (PCP) and then obtain services from within that PCP’s panel of providers, DYS involved youths do not have to select a PCP.⁹⁹ Since DYS involved youths move around the state more frequently than the general population, such a practice would be difficult to apply. Instead, DYS involved youths may access services from a PCP provider in the area where they are located. The provider chosen may be, for instance, the provider relied upon by the program in which the DYS involved youth is placed.¹⁰⁰

97 Vicky Pulos, Mass. Law Reform Institute, MassHealth Advocacy Guide (2009/2010), Part 16, available at <http://www.masslegalservices.org/system/files/MassHealth2009.Pts16and17.pdf> at 183.

98 130 CMR 508.001(A)(6); DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 2.


99 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

100 Telephone communication from Robert Turillo, DYS to MHLAC (Feb. 22, 2010).

 **Tip for families:** If your child has behavioral health issues and is newly enrolling in MassHealth, the Partnership may be a better insurance plan choice than one of the MCO plans as the Partnership has a better reputation for how they manage the delivery of their services.

Private health insurance

When a youth has private health insurance through his family, this insurance, to the extent that coverage is available, must be used prior to drawing on Medicaid dollars.¹⁰¹ The Massachusetts mental health parity law, requiring some private insurers to pay for certain mental health services, does not require those private insurers to pay for mental health services for youths in DYS custodial facilities when those services are covered by other health insurance plans (such as MassHealth).¹⁰²

 **Tip for families:** Despite the potential limits of coverage that may exist, it is probably a good idea to maintain private health insurance for your child (even if your child is age 18 or older) if it is affordable and provides a rich array of benefits with low co-pays and deductibles.

Other state agency health care services

As earlier sections in this chapter explain, DYS involved youths in custody receive health care services from DYS. In addition, DYS involved youths may be able to get health care services from state agencies other than DYS.

For example, a youth who is a DMH client and needs mental health services may receive such services through DMH. These services may be available in addition to mental health services paid for by public or private insurance.

Similarly, a youth who require substance abuse treatment may be able to receive certain treatment services from the Department of Public Health's Bureau of Substance Abuse Services (BSAS). Specifically,

¹⁰¹ 109 CMR 11.22(9).

¹⁰² Codified in part at Mass. Gen. L. ch. 175, § 47B(i) (amended most recently by Chapter 256 of the Acts of 2008).

BSAS funds some residential treatment programs. These services may be available in addition to substance abuse services paid for by public or private insurance.

CHAPTER 13:

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES DURING CONFINEMENT

DYS identification of mental health problems	13.2
DYS identification of alcohol or substance abuse problems	13.4
Monitoring of youth identified as posing a risk of self-harm or suicide.....	13.5
DYS follow-up clinical evaluation	13.7
Traditional DYS counseling services.....	13.8
Mental health services	13.8
Substance abuse services.....	13.10
Effective mental health treatment.....	13.10
Right to receive and refuse medication	13.11
Additional provisions regarding psychotropic medication for youths in DYS facilities.....	13.14
Committed youths.....	13.14
Detained youth	13.15
Administering medication	13.15
Department of Mental Health services	13.16
Residential educational placement.....	13.17
Substance abuse testing	13.17

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES DURING CONFINEMENT

This chapter should be read in conjunction with the previous chapter, “Medical Services During Confinement” and the chapter, “Mental Health and Substance Abuse Services in the Community.”

For youths in programs licensed by the state Department of Early Education and Care (DEEC), this chapter should also be read in conjunction with the explanation of DEEC regulatory requirements regarding mental health care, discussed above in the chapter entitled “Overview of Rights During Confinement.”

This chapter does not apply to youths held in pre-arraignment detention facilities known as Alternative Lockup Programs (ALPs).

DYS identification of mental health problems

Youths who become involved in the juvenile justice system are more likely to experience mental illness problems than their peers. Simply going through the juvenile justice system and living away from home can create or add to such problems.

Many youths who enter the juvenile justice system have been diagnosed with mental illness, but for others, these problems are not identified until after they undergo DYS intake, the DYS 30-day assessment, or treatment in a DYS program.

This section describes screening for self-harm that DYS pursues for youths entering secure facilities, residential facilities and community placements. These screenings are in addition to the screening and examination practices discussed in the previous chapter, “Medical Services During Confinement.”

DYS policies ensure that youths entering secure facilities, residential facilities and community placements receive an assessment of their risk of self-harming.¹


As part of the intake to a *secure unit* or a *residential unit*, staff must conduct a suicide assessment.² This assessment must occur as

1 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), and DYS Policy # 2.2.7(a) Suicide Assessment at Community Placements (Nov. 1, 2005).

2 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, B, 1; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, B, 1.

soon as possible, but in no case longer than six hours after arrival.³ The assessment must include: obtaining a history of prior suicide attempts, gestures or ideation; reviewing written material regarding the youth; recording communications from transportation staff and prior placements; completing the intake screening forms; requesting information from parents or legal guardians; and administering an assessment tool called the Massachusetts Youth Screening Instrument, Second Version (MAYSI-2).⁴ A more limited intake screening may occur, however, if a youth is arriving from another DYS facility and certain conditions are met.⁵

When a youth is referred to a *community placement*, the DYS caseworker or DYS community monitor assigned to the youth shall receive a referral package, which he or she must review for information related to psychiatric hospitalizations, suicidal gestures, suicidal ideation or any other information suggesting an elevated risk of suicide.⁶ Youths with a history of suicidal ideation or suicide attempts must receive appropriate referrals for outpatient treatment as part of the treatment plan.⁷ The plan must be in place prior to the youth's arrival at the placement.⁸ Youths who appear to be at an immediate elevated risk of suicide will be referred to the Mobile Crisis Intervention Team for evaluation, including evaluation of the need for psychiatric hospitalization.⁹

 **Tip for families:** If you have concerns regarding your child's mood or behavior while he is in a DYS run or contracted facility, let both your child's caseworker and facility staff – particularly clinical staff – know so that they can help your child receive appropriate assessment and treatment.

-
- 3 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, B, 2; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, B, 2.
 - 4 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, B, 2; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, B, 2. MAYSI-2 is an assessment tool used to identify signs of mental and emotional disturbances or distress. The tool is divided into seven scales designed to detect alcohol/drug use, angry-irritable behavior, depression and anxiety, somatic complaints, suicide ideation, thought disturbance and traumatic experience.
 - 5 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, B, 3; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, B, 3.
 - 6 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, B.1.
 - 7 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, B.2.
 - 8 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, B.2.
 - 9 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, B.2.

DYS identification of alcohol or substance abuse problems

Approximately 80% of the DYS population self report the use and abuse of alcohol and/or drugs.¹⁰ As soon after intake as a bed becomes available, the youth will be moved to an assessment unit. There, DYS conducts a 30-day assessment.¹¹ The assessment seeks to determine the presence or absence of drug or alcohol abuse or dependency as well as its nature and complexity.¹²

As described in the section of Chapter 7, Commitment and Assessment, entitled “Assessments of Committed Youths,” all committed youth are screened for substance abuse disorders during assessment using the Global Appraisal of Individual Needs -- Short Screener (GAIN-SS).¹³ The GAIN-SS is an indicator of whether substance abuse is a risk factor and whether the youth needs a more in-depth assessment.¹⁴

Youths determined to need further diagnostic assessment, based on the GAIN-SS, will be administered a follow-up assessment, the Global Appraisal of Individual Needs - CORE (GAIN-CORE).¹⁵ The GAIN-CORE is an evidence-based diagnostic tool to suggest what level of treatment is needed.¹⁶

The results of the screening and assessment tools, along with other data, will determine which substance abuse services track the youth will be placed in: treatment or prevention.¹⁷ This determination should be available at the initial staffing for development of the youth’s service delivery plan.¹⁸

Both the treatment and prevention tracks use evidence based curricula. The prevention track uses Alternate Routes, and the treatment track uses the Matrix Model.¹⁹ The curriculum is adolescent and gender specific.²⁰

10 DYS, Frequently Asked Questions about the Recovery and Reinvestment Plan (visited Nov. 3, 2009), <http://www.mass.gov/eohhs> (search 80% of DYS).

11 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

12 DYS Policy # 2.3.6, Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), C.

13 DYS Policy # 2.3.6, Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), C,1; DYS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

15 DYS Policy # 2.3.6, Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), C.3; DYS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

16 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

17 DYS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

18 DYS Policy # 2.3.6, Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), C.3.

19 DYS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009).


20 DYS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009).

DYS provides these services in all of its residential programs.²¹

For more information regarding substance abuse services, see the section entitled “Accessing substance abuse services” in Chapter 19, Mental Health and Substance Abuse Services in the Community.”

Monitoring of youth identified as posing a risk of self-harm or suicide

Teenagers are at a high risk, relative to other age groups, for suicide. Gay, lesbian, bisexual, transgender, and queer youth are at a greater risk than their heterosexual peers. Youths involved with the juvenile justice system tend to have higher rates of mental health problems than the general adolescent population. In addition, the lives of youth who are in DHS custody are often further stressed by being in custody. Thus, some children held in DHS facilities attempt suicide. This fact is not surprising, although it is extremely concerning.

 **Tip for families:** Suicide warning signs include: suicide threats, prior attempts, preoccupation with death and dying, depression and behavior changes, and choosing to part with favorite possessions.

DYS facilities must have procedures in place to identify potential suicide risk. Youth who are identified as at risk are provided with heightened supervision. The DHS policies on suicide assessment describe four status levels for youths: full suicide watch, elevated suicide watch, suicide alert status and general status. Full suicide watch provides the most supervision, involving observing staff being no more than six feet from the youth at all times.²² Elevated suicide watch provides slightly less supervision, with observing staff being no more than twelve feet away at all times.²³ Suicide alert status provides slightly less, with observing staff regularly checking the behavior of the youth including four minute room checks and constant motion checks at night or when the youth is in his room, but not maintaining constant supervision.²⁴ General status is the status of youths not on a suicide watch; these youths receive ten minute room checks and constant motion checks at night or whenever they are

21 DHS, Substance Abuse Services for Juvenile Offenders, <http://www.mass.gov/dys> (visited Nov. 16, 2009).

22 DHS Policy # 2.2.5(c) Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, F; DHS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, E.

23 DHS Policy # 2.2.5(c) Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, G; DHS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, F.

24 DHS Policy # 2.2.5(c) Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, H; DHS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, G.

in their rooms.²⁵ The secure and residential facilities policies spell out procedures for the four levels of watch.²⁶

When a youth in a secure or residential facility is on a full suicide watch, staff must contact an Mobile Crisis Intervention Team (of the Emergency Services Program (a MassHealth service) so the team can conduct an evaluation of the youth, including an evaluation as to whether the youth needs psychiatric hospitalization.²⁷

If a youth in a *secure or residential facility* makes a suicide attempt that has resulted in any injury, the youth must be seen by medical personnel as soon as possible.²⁸ If the attempt has resulted in no injury, it must be documented, the youth elevated to a full suicide watch and the unit must call the emergency screening team.²⁹ If the attempt has resulted in serious injury, the youth must be transported to the emergency room immediately for treatment.³⁰ If a youth informs unit staff that he feels unsafe or wishes to harm himself, the staff must notify the shift supervisor or administrator and place the youth on elevated suicide watch.³¹

If a youth has made a suicide attempt at a *community placement* that has led to serious injury, the youth must be transported to the emergency room immediately for treatment by ambulance.³² Parents or legal guardians should be notified as soon as possible.³³ If the youth has made an attempt that has not led to serious injury, the youth should be transported to the emergency room as soon as possible.³⁴ Parents or legal guardians should be notified as soon as possible.³⁵ If the youth has made an attempt that has not resulted in injury, the attempt must be documented and parents or legal guardians notified as soon as possible.³⁶

If a DYS caseworker or other community staff receives a report from a youth, parent, teacher, or other reliable source that a youth (who is not currently physically present in the placement) may be feeling unsafe or wishes to harm himself, the caseworker or staff must refer the youth

25 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, I; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, H.

26 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, F, G, H, I; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, E, F, G, H.

27 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, K; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, J.

28 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, L.1; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, K.1.

29 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, L.1; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, K.1.

30 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, L.2; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, K.2.

31 DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), Procedures, L.3.; DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), Procedures, K.3.

32 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, D.1.


33 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, D.1.

34 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, D.2.

35 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, D.2.

36 DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, D.3.

for assessment by a mental health professional.³⁷ If the caseworker or staff believes the youth is in immediate danger, the caseworker or staff must call police, as appropriate, so that they may protect the youth.³⁸ If the danger is not immediate, but there is some risk, the caseworker must attempt to ensure the youth's safety by taking steps, listed in DYS policy, to help the youth accept mental health services.³⁹

 **Tip for families:** If you are worried that your child is at risk, alert DYS and monitor the response to your concerns. Seek out the DYS Regional Director if you do not think the staff is handling the situation appropriately.

DYS follow-up clinical evaluation

When DYS has questions regarding a youth that requires in-depth examination, DYS may request an in-depth forensic evaluation. DYS uses licensed DYS clinicians for the majority of clinical evaluations.⁴⁰ If DYS requires specialized evaluations, DYS selects an evaluator from a list of pre-qualified experts who are on a statewide service contract.⁴¹ Evaluations may be conducted for any of the following purposes:

- to evaluate whether a youth poses a high risk of harm to himself or to others (and perhaps to conduct a needs assessment), particularly to determine whether a youth is ready for release on a projected date;
- to provide extension of commitment evaluations;
- to provide evaluations of youths with a history of sexual offenses;
- to perform evaluations for the court in response to a judge's referral of a child to DYS⁴² and other court-related evaluations; or
- to provide mental health treatment recommendations.

Such an evaluation carries weight with DYS, but ultimately DYS must reach its own decision regarding a youth's future. In some cases, that decision may contradict the evaluator's recommendations.

Evaluations are often based on a review of the offense history and the youth's conduct since coming to DYS. The evaluator likely will look at

³⁷ DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, E.1.

³⁸ DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, E.2.

³⁹ DYS Policy # 2.2.7(a), Suicide Assessment at Community Placements (Nov. 1, 2005), Procedures, E.3.

⁴⁰ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 3.

⁴¹ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 3.

⁴² Mass. Gen. L. ch. 119, § 68A.

records and talk to the youth, DYS clinicians and family.

Information that a youth or family member provides to the evaluator will not be kept private or confidential and can be included in the report to DYS. Prior to conducting the evaluation, the evaluator must warn the person being interviewed that the information disclosed to the evaluator will not be kept private. This warning is called a “Lamb warning,” after the case, *Commonwealth v. Lamb*, that dictates that such a warning be given.⁴³ The warning should include notice that the information could be used in a proceeding to extend commitment to DYS.⁴⁴ The evaluator should inform those interviewed of that fact.

Traditional DYS counseling services

While services vary by site, many DYS facilities also offer counseling to help develop accountability and social skills development. This form of counseling is not treatment for mental health problems, but is designed to help children develop the social skills and competencies they need to be functioning members of the community. This counseling is aimed at helping the child recognize why he broke the law in the first place, how to avoid falling back into the same behaviors, and how to develop consistently “pro-social behaviors.”

Mental health services

DYS must provide DYS involved youths with services to prevent delinquency.⁴⁵ These include services to diagnose and treat mental health and substance abuse problems.⁴⁶ Services should be appropriate to the youth’s condition and delivered by health care professionals. Further, mental health and substance abuse services should be provided in coordination with one another.

With respect to mental health services, DYS programs have a clinical director and clinicians working under the clinical director. These individuals deliver mental health treatment. In addition, the DYS Clinical Services Unit oversees the counseling services provided to youths in DYS residential care.⁴⁷ DYS youths should be able to access a full range of services including assessments, medication, individual therapy, and group therapy.


43 365 Mass. 265 (1974).

44 *Department of Youth Services v. A Juvenile*, 398 Mass. 516 (1986).

45 Mass Gen. L. ch. 18A, § 2.

46 See Mass Gen. L. ch. 18A, § 2.

47 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 40.

 **Tip for families:** If your child already has a mental health clinician, such as a psychologist or psychiatrist, in the community, he may be able to continue seeing that clinician if the clinician is willing to come to the DYS facility to provide treatment. Talk to the clinician and the staff at the DYS facility to see if such arrangements are possible.

In general, DYS clinicians deliver behavioral health services in DYS facilities.⁴⁸ Typically, youths in hardware secure DYS facilities will not receive MassHealth services until they leave the facility.⁴⁹ However, when a behavioral health crisis occurs, DYS staff must call a Mobile Crisis Intervention team. These teams, funded by MassHealth, are available 24/7 and travel to the youth's location to provide evaluation.⁵⁰ The Mobile Crisis Intervention team provider will assess whether the current level of care is appropriate.⁵¹

If a youth needs a high level of mental health services, DYS can, upon classification or at some later point, send the youth to a specialized DYS program.

DYS has a hardware secure unit for boys with substantial mental health needs called the Butler Center, which is located on the grounds of Westborough State Hospital. A Juvenile Forensic Transition Coordinator from the Massachusetts Department of Mental Health (DMH) consults with DYS and the Butler Center, helping to identify youth with serious mental illness and streamlining access to adult DMH services, where appropriate.⁵²

Similarly, DYS has a hardware secure unit for girls with substantial mental health needs called the Fay A. Rotenberg School for Girls, which is located in the Zara Cisco Brough Center on the grounds of Westborough State Hospital.

If a youth needs more mental health care than DYS can provide at one of their facilities, he should be transferred to another setting. For example, if he needs acute care, he should be transferred to a hospital

48 DYS and EOHHS, DYS Strategic Direction of Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

49 DYS and EOHHS, DYS Strategic Direction of Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

50 DYS and EOHHS, DYS Strategic Direction of Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

51 DYS and EOHHS, DYS Strategic Direction of Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

52 Commonwealth of Massachusetts Department of Mental Health Forensic Services and NAMI Massachusetts, Decriminalization of Mental Illness: A Snapshot Look at Diversion Models in the Commonwealth (March 2011) at 21.


psychiatric unit. If he is eligible for Department of Mental Health (DMH) care, he may have other options (discussed below).

Substance abuse services

Substance abuse treatment, appropriate to a youth's individual needs, should be available to detained and committed youths in all DYS programs.⁵³

As described earlier in this chapter, the assessment unit clinician evaluates all youth using the GAIN-SS (an evidence based screening tool) and, if needed, the GAIN-CORE (an evidence based assessment tool) to help determine which substance abuse service track (treatment or prevention) to recommend a youth is placed in.⁵⁴

A DYS youth may be referred to a community-based residential substance abuse program, overseen by the Department of Public Health's Bureau of Substance Abuse Services (BSAS), after the DYS assessment process.⁵⁵ Similarly, a committed youth entering the community may be referred to a BSAS residential program if actively using in the community and meets criteria for residential, with no public safety issues.⁵⁶ For more information about residential substance abuse programs, see the chapter entitled "Mental Health and Substance Abuse Services in the Community."

 **Tip for families:** You may need to advocate for your child to receive the substance abuse services he needs. Be sure to attend your child's staffing and monthly treatment team meetings. Talk to your child's DYS caseworker. In addition, do not be reluctant to ask to talk directly with your child's mental health or substance abuse treatment providers.

Effective mental health treatment

Effective mental health treatment for children and adolescents may involve multiple components. One description of effective treatment is treatment that:

- simultaneously addresses multiple risk factors;
- is tailored to the individual child;

53 DYS, Public Information Packet (Oct. 2009), http://www.mass.gov/Eeohhs2/docs/dys/public_info_packet.pdf, at 3-4.


54 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 26.

55 Telephone conversation with Maggie Giles, Director of Youth Services, Central Intake Coordinator, Institute for Health and Recovery (Feb. 20, 2007).

56 Email correspondence from Peter Kosciusko, Director of Substance Abuse Services, DYS (Feb. 9, 2011).

- is sufficient in duration;
- maintains high standards; and
- is implemented by qualified staff.

Usually, it is more effective to receive treatment in the community, when possible. For further discussion of this principle, see the section entitled “Pursuing community-based services for youths with mental health needs” in Chapter 6, Trial, Adjudication, and Disposition.


 **Tip for families:** Effective treatment may involve medication alone, but, more often involves medication in conjunction with other services, such as talk therapy. In fact, a child may receive effective treatment that involves no medication at all. Before making a decision about medication, you should familiarize yourself with the range of types of treatment available for your child. If possible, it is advisable to seek a second opinion from, for example, your child’s community-based doctor.


Right to receive and refuse medication


If a youth has a mental illness and his parents or legal guardian and his doctor believe he would benefit from psychotropic medication - - medication that affects mood thought processes or behavior and used in the treatment of mental disorders, he has the right to receive such medications while in a DYS facility.⁵⁷

It is the responsibility of the health care team treating the youth to make decisions as to whether or not to prescribe prescription medication and at what dosages to prescribe it. However, the ultimate power to prescribe rests with the treating psychiatrist.

⁵⁷ See Mass. Gen. L. ch. 18A, § 2; 109 CMR 11.01, 11.14, 11.15, 11.16.

 **Tip for families:** It is important to work closely with your child’s psychiatrist to assess whether psychotropic medication is appropriate for your child and, if so, which one(s). DMH has published a useful guide entitled “Psychoactive Medication for Children and Adolescents: Orientation for Parents, Guardians, and Others” (rev. 2005), available at http://www.mass.gov/Eeohhs2/docs/dmh/publications/psychoactive_booklet.pdf. In addition, a list of questions to ask when speaking with your child’s psychiatrist about psychotropic medication can be found in “Psychopharmacology for Children and Adolescents: An Overview” (2001) by Robert D. Fleischner, available at <http://www.centerforpublicrep.org/juvenile-justice/psychopharmacology-for-children-and-adolescents>.

 **Tip for families:** Parents should talk to their child’s psychiatrist to understand the basis for the prescription of any antipsychotic medication. Any decision to prescribe medication must be based on a youth’s individual case. If you have concerns about your child’s need for or response to a medication, it is important to alert your child’s psychiatrist or other member of his health care team.

 **Tip for families:** Be aware of reported trends in medication prescription to youths receiving DYS services and/or Medicaid services. A 2006 Massachusetts study compared the use of behavioral health medications by DYS involved youths and similarly situated children not involved with DYS (but also receiving MassHealth and Massachusetts Behavioral Health Partnership (MBHP) services). The study suggests the possible underutilization in DYS locked settings of behavioral health medications for treating youths diagnosed with bipolar disorder. MBHP, “Patterns of Medication Prescribing for Children in the Massachusetts Child Welfare and Juvenile Justice Systems” (June 2006), http://www.masspartnership.com/provider/index.aspx?InkId=reports.ascx&imgID=Prov_ReportsPublications.jpg, at 20 (35% of DYS youth in locked facilities versus 50% of comparison group, and 20% of DYS involved youth in the community versus 38% of comparison group) and at 14 (62% of DYS youth in locked facilities with a diagnosis of Bipolar Disorder had not received mood stabilizers, compared to 35% of youth in the comparison group). A 2009 study, based on a review of Medicaid and private insurance claim records in seven states between 2001 and 2004, concluded that children with Medicaid were given powerful antipsychotic medicines at a rate four times higher than children with private insurance. Additionally, children on Medicaid were more likely to receive antipsychotics for less severe conditions than their middle-class counterparts with private insurance. While research suggests that low-income children have approximately twice the rate of mental health problems as their better-off counterparts, that does not explain the disparity the team found. Stephen Crystal *et al.*, “Broadened Use Of Atypical Antipsychotics: Safety, Effectiveness, And Policy Challenges,” *Health Affairs* (July 2009), <http://content.healthaffairs.org/content/28/5/w770.abstract>.


If a psychiatrist has prescribed an anti-psychotic drug, mood altering drug, or psychostimulant, DYS must obtain written consent from the parent or legal guardian (of a youth under age 18) before the youth may take the medication.⁵⁸ If the youth (age 18 or older) or parent does not consent to such a medication (or no parent of a minor youth is available to consent), the youth is watched (absent a medical emergency).⁵⁹ If the youth’s condition begins to deteriorate or there will be a medical emergency if the youth does not take the recommended medication(s), the youth is referred to a medical facility.

⁵⁸ 109 CMR 11.14(2), 11.15(2), 11.16(2). While these regulations allow DYS the alternative of seeking prior judicial approval, DYS does not pursue this course of action. Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

⁵⁹ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

The health care team treating a youth in DYS custody may order continued treatment with psychotropic medications if parents or legal guardians cannot be reached and abrupt withdrawal may pose a risk to the youth.⁶⁰ Administration may continue until the parent or legal guardian is contacted.⁶¹

If a youth does not want to take a psychotropic medication, DYS will not force him to and will not pursue judicial authorization.⁶² Thus, medication prescribers must obtain informed consent from the youth (and from the parent or legal guardian if the youth is under age 18) before administering psychotropics.⁶³ The medication prescriber must explain to the youth and parents or legal guardians: the purpose of the medication; the targeted behavior, thoughts or symptoms; the potential benefits or expected outcomes; all common and all potentially serious side-effects, including their probability; alternative treatments, if any; the youth's right to change his mind at a later date; all tests needed to monitor side effects and/or therapeutic efficacy; the likely duration of treatment, if known; and the approximate time until the next evaluation.⁶⁴ Consent must be documented in writing and the documentation included in the youth's medical file.⁶⁵

 **Tip for families:** If you or your child has questions about the medication, ask to talk with your child's prescribing doctor. You should be allowed to communicate directly with your child's doctor. If you are having difficulty doing so, contact your child's DYS caseworker. If that is not successful, contact the caseworker manager/supervisor. If that fails, contact the DYS Regional Director or the DYS Director of Clinical Services.

Additional provisions regarding psychotropic medication for youths in DYS facilities

Committed youths

DYS will only treat committed youths with psychotropic medication after a psychiatric evaluation and as part of an overall treatment plan.⁶⁶

60 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Policy section.

61 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Policy section.

62 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Policy section.

63 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, B.2.

64 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, B.3.

65 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, B.8.

66 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Policy section.

Detained youth


DYS must continue to provide youths entering a detention facility from court with currently prescribed psychotropic medication if the parent or legal guardian and the youth confirm information about the current treatment and give consent for continuing treatment.⁶⁷ The program director or clinical staff must call the parent or legal guardian and the prescribing physician of a youth entering detention to confirm that the youth is currently being treated with psychotropics.⁶⁸ The prescribing psychiatrist then may order the same medication from the pharmacy affiliated with DYS.⁶⁹ Treatment will continue if the parent or legal guardian gives consent,⁷⁰ or temporarily if a physician or psychiatric consult determines that interrupting the medication would be unsafe.⁷¹

Administering medication

If a youth in DYS custody needs medication, the medication prescriber calls the prescription into a designated pharmacy and it is delivered to the program for administration to the youth.⁷²

DYS residential facilities may only order prescriptions from designated pharmacies.⁷³ Prescriptions filled outside of DYS supervision may not be accepted.⁷⁴

In light of the above cited policies, DYS programs will not accept medication directly from parents. Parents should make sure, instead, to have the community medication prescriber call the DYS health care team and call the prescription into the DYS designated pharmacy.⁷⁵

 **Tip for families:** If you have medication that you believe your child needs urgently, bring it to the location staff and ask that they proceed according to DYS' medication administration policy.

A youth in DYS custody has an absolute right to receive the medication he has been prescribed. The staff at the facility may not

67 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Policy section.

68 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, C.1.

69 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, C.2.

70 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, C.6.

71 DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000), Procedures, C.9.


72 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).


73 DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), Policy section.

74 DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), Policy section.

75 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

withhold his medication for disciplinary reasons.

 **Tip for families:** If staff persons are withholding prescribed medication from or not properly dispensing it to your child, ask to speak directly with the prescribing doctor. You could also speak to the facility supervisor and/or your child's DYS caseworker.

 **Tip for families:** DYS is not set up to start courses of psychiatric medication in its facilities. However, DYS seeks to ensure that any medications a youth is already taking are continued. If your child is going to miss doses of psychiatric medication, tell your child that this may affect how he feels and let him know that he should tell staff if he is experiencing withdrawal effects.

Licensed DYS health care staff are responsible for administering medication.⁷⁶ Under new DYS policy, some youths may self-administer medication under direct supervision of authorized staff.⁷⁷ Youths capable of self-medicating must understand that they are being treated with medication, and how and when the medication is taken. They must also be physically capable of self-medicating and must cooperate with DYS staff in the process.⁷⁸

Department of Mental Health services

If a youth in a DYS facility needs acute care mental health services, he may need to be transferred to an acute care facility for psychiatric treatment. Although DMH does contract for adolescent continuing care inpatient services at Intensive Residential Treatment Programs (IRTPs), at Behavioral Intensive Residential Treatment programs (BIRTs), and at a Clinically Intensive Residential Treatment program (CIRT), most acute psychiatric care is provided not by DMH hospitals, but by private general and private psychiatric hospitals through MassHealth and its managed care entities.⁷⁹ Thus, a youth needing acute mental health care would be transferred to a private facility. In some cases a youth receiving care in an acute facility will then be transferred to a DMH continuing care facility.⁸⁰

If a youth needs long-term care, he may be transferred to an IRTP

⁷⁶ DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), Policy section.

⁷⁷ DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), Policy section.

⁷⁸ DYS Policy # 2.5.15(b), Medication Administration (Jan. 30, 2010), F.2.

⁷⁹ Correspondence from Joan Mikula, Department of Mental Health (Jan. 18, 2008).

⁸⁰ These transfers tend to be pursuant to Mass. Gen. L. ch. 123, §§ 10 & 11, or less frequently, Mass. Gen. L. ch. 123, §§ 7 & 8. Correspondence from Lester Blumberg, Department of Mental Health to MHLAC (Mar. 2007).


pursuant to an agreement between DMH and DYS (even if he was not initially a DMH client).⁸¹ IRTPs are programs contracted by DMH and are located on the grounds of state psychiatric hospitals. These programs are licensed by DMH to provide a secure residential setting for adolescents needing intensive mental health services.


Additional information regarding DMH services is included in the chapter entitled “Health Insurance and Other Health Care Funding Sources in the Community” below.

Residential educational placement

If a youth needs intensive mental health services, but does not require the security of a locked psychiatric unit (and the youth is eligible for special education services), DYS could transfer the youth to a special education residential school that offers specialized services to mentally ill youth. There are many DESE-approved special education residential schools in Massachusetts.

Before DYS could make such a transfer, the youth’s educational team must agree that a residential placement is necessary and also agree to the particular placement. In addition, the residential placement must accept the youth into its program.

 **Tip for families:** DYS may consider such a placement even before your child’s DYS time assignment is up (*e.g.* before your child has completed his time in secure treatment) because the placement is considered part of an aftercare plan.

 **Tip for families:** If you believe that your child requires more intensive mental health or educational services than those he is currently receiving in DYS, consider contacting one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Substance abuse testing

DYS policy provides for substance abuse testing of youths for the presence of drugs and alcohol.⁸²

⁸¹ Department of Mental Health & Department of Youth Services, Memorandum of Understanding (1999); DMH, Transfer Protocol Guidelines, available at www.mass.gov/dmh.

⁸² DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.

Substance abuse testing of DYS committed youths residing in DYS facilities may occur as part of the youth's treatment plan or as part of medically necessary treatment.⁸³ Random and surveillance substance abuse testing is not allowed during a youth's confinement to DYS.⁸⁴ However, DYS committed youths living in the community and receiving outpatient services may be tested randomly or under surveillance if it is part of a treatment plan.⁸⁵ Only DYS health services or authorized outpatient providers may administer substance abuse tests, and results must be kept confidential.⁸⁶

If a DYS committed youth in a residential program tests positive on a substance abuse test, a review may take place to determine appropriate interventions and revisions of the youth's treatment/service plan.⁸⁷

For further information regarding substance abuse testing in the community, see the section entitled "Substance abuse testing" in Chapter 19, Mental Health and Substance Abuse Services in the Community.

83 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.1.

84 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.1.

85 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.1.

86 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.3 and DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, H.

87 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment, Policy (Oct. 1, 2009), F.4.a.

CHAPTER 14:

EDUCATION SERVICES DURING CONFINEMENT

The effect of juvenile justice system involvement on education	14.2
DYS' education provider	14.2
Which youths receive educational services in DYS facilities	14.3
Initial assessment.....	14.3
Movement through DYS.....	14.4
The right to quality education	14.5
Curriculum	14.6
Ongoing assessment of students	14.7
Teacher certification.....	14.8
Student-teacher ratio	14.8
Learning time.....	14.8
English language learners.....	14.9
Special education services	14.9
Education Liaisons	14.10
Vocational education	14.11
Pursuing a Massachusetts State High School Equivalency Diploma (GED)	14.12
Pursuing post-secondary education	14.13

EDUCATION SERVICES DURING CONFINEMENT

The effect of juvenile justice system involvement on education

Involvement with the juvenile justice system frequently causes an interruption in a youth's education in the community. This interruption may be caused by a police arrest or a Juvenile Court order that a youth be held in detention or committed to DYS. Even for detained youths, the vast majority of whom are bailed and return to their community school setting within a matter of days, juvenile justice involvement can be disruptive.

DYS' education provider

DYS delivers educational services (with the exception of special education services) by purchasing educator services through contracts with non-profit providers or educational collaboratives.

To pursue the improvement of its educational delivery system, DYS has in recent years contracted with Commonwealth Corporation, a quasi-public organization devoted to education and workforce development. Commonwealth Corporation's DYS initiative, called the Comprehensive Educational Partnership, operates out of its Youth Pathways department. DYS and Commonwealth Corporation renewed their original contract in 2008.

As DYS' education provider, Commonwealth Corporation has two roles. First, Commonwealth Corporation serves as DYS' lead educational entity, acting as the chief educational policy advisor to DYS and recommending statewide standards to guide education services across all DYS program sites.

Second, Commonwealth Corporation oversees both the hiring of teachers and the provision of educational services to DYS confined youths.¹ To do so, Commonwealth Corporation subcontracts with the Collaborative for Education Services (CES) to hire teachers and provide educational services at certain programs.² Through this arrangement,

1 DYS and DOE, Letter from Michael Bolden and David Driscoll to Senator Therese Murray and Representative John Rogers attaching report on the status of educational services within DYS (Feb. 1, 2005), at 2.

2 DYS and DOE, Letter from Michael Bolden and David Driscoll to Senator Therese Murray and Representative John Rogers attaching report on the status of educational services within DYS (Feb. 1, 2005), at 2; Comm. Corp., DYS Comprehensive Education Partnership, <http://commcorp.org/areas/int.cfm?ID=16&sub=170>.

CES employs the teachers in 70% of DYS programs.³ In the remaining programs, the providers running the program employ their own teachers.⁴

Through this structure, there are approximately 14 providers in addition to the state delivering educational services to DYS involved youths.⁵

Which youths receive educational services in DYS facilities

DYS' enabling statute requires the agency to provide educational services to detained or committed youths.⁶ To meet its statutory obligation, DYS provides educational services to all youths residing in DYS run or contracted facilities.⁷

DYS requires all its confined youths under age 16 to participate in education. In addition, DYS encourages confined youths ages 16 to 20 to continue some type of educational programming.⁸ Youths, unless mature or emancipated, need parental permission before discontinuing their public education at age 16. DYS confined youths who have received a high school diploma or a GED are offered college level classes.⁹

Initial assessment

With respect to a detained youth, DYS performs an immediate education assessment, called the Test of Adult Basic Education (TABE) pre-test to determine the youth's level of academic functioning.¹⁰ DYS then places the youth immediately into a classroom.¹¹

In addition, DYS works with the Department of Elementary and Secondary Education (DESE) to access the detained youth's educational


- 3 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 2.
- 4 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 2; DYS and the Department of Education, Letter from Michael Bolden and David Driscoll to Senator Therese Murray and Representative John Rogers attaching report on the status of educational services within DYS (Feb. 1, 2005), at 2.
- 5 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 43.
- 6 Mass. Gen. L. ch. 18A, § 2.
- 7 DYS, Educational and Vocational Services, <http://www.mass.gov/dys>.
- 8 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007); Correspondence from DYS to MHLAC (Jan. 14, 2008). While Massachusetts law, allow an individual to opt out of compulsory education at age 17, all youth in DYS custody receive education.
- 9 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 10 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 11 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

records from the youth's school district as soon after he arrives as possible.¹²


DYS performs a 30 to 45 day assessment of committed youths including a review of educational records and use of several assessment tools.¹³ This assessment seeks to determine, among other things, whether a youth has been functioning below grade level at his prior school.¹⁴ The assessment is used to identify any special issues which may affect learning and to design an individual learning plan.¹⁵ If the youth has not already been administered the TABE pre-test, that test is administered as part of this assessment process.

Movement through DYS

Youths committed to DYS may well transition through a number of programs while receiving treatment at DYS. As your child moves from program to program, his educational records should follow.

 **Tip for families:** When your child enters a new program, ask if his education records have followed him.

A transition to a new DYS program may result in a youth being assigned new teachers.

 **Tip for families:** When your child enters a new program, ask who his teachers will be and whether they are new to your child.

A transition to a new program may also result in new policies regarding education, such as homework.

While some DYS facilities encourage homework, others do not.¹⁶ And, as in the community, some teachers assign homework and others do not.¹⁷ Additionally, some detention units prevent youths from bringing in homework from their community schools and doing it on the unit. If safety and security is threatened, DYS program managers have the right to prevent outside materials from entering the unit, at least until they can be

12 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

13 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

14 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).


15 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

16 Katie Martin, *The Role Education Plays in Massachusetts Youth Crime Prevention* (Aug. 2006) at 23 (on file with MHLAC).

17 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

inspected.¹⁸

Practice also varies regarding whether youths can remove textbooks from a classroom. Often, due to safety and security concerns, youths cannot remove textbooks.¹⁹

 **Tip for families:** So that you may be aware of the academic expectations for your child, discuss the program's policies, such as those regarding homework and textbooks, with your child's DYS caseworker or with program staff.

The right to quality education

While confined within a DYS facility, a youth has the right to receive a quality education.²⁰ Like all Massachusetts school age children, youths detained in or committed to DYS facilities are entitled to a public education that meets the standards under the Massachusetts Constitution and Massachusetts and federal laws.

To improve the quality of education in DYS facilities, DYS adopted, in 2005, a set of minimum requirements for education -- also known as Minimum Education Standards (MES).²¹ These standards are focused on nine aspects of educational service delivery: program facilities, staffing, professional development, class schedules, curriculum and materials, student transcripts, testing, services for students with special needs, and technology.²² DYS has outlined the requirements in each of these areas in a two page document.²³

After the establishment of the MES, DYS followed up with other steps to improve educational quality including site visits, training, improved communication, and field assessments.²⁴

18 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

19 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

20 Mass. Gen. L. ch. 69, § 1D; *McDuffy v. Secretary of Executive Office of Education*, 415 Mass. 545 (1993) (all public school children must receive a comprehensive, high quality education in several academic subjects), which was codified by Section 1 of the Massachusetts Education Reform Act of 1993, Chapter 71 of the Acts of 1993.

21 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 44.

22 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 44.

23 This document is reproduced in University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 45.

24 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 45. Field assessments were discontinued in Fiscal Year 2008 as DYS seeks a more rigorous and objective reporting system. University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 46.

A number of these standards, and DYS efforts to meet them, are discussed below.

Curriculum

All Massachusetts public school students have rights regarding curriculum. Children must receive a comprehensive, high quality education in certain “core subjects” including English, math, science and technology, history and social science, foreign languages and the arts.²⁵ Massachusetts public school students also must receive physical education.²⁶

The subjects offered to youths confined in DYS facilities are usually more limited. English, math, science, social studies, and physical education are standard offerings.²⁷ While some programs offer other subjects, such as art, it is unlikely that the facility will offer the full range of coursework available in a community-based public school.

However, DYS is developing the COMPASS learning system as a vehicle to deliver foreign language education, arts, and other specialized subjects to DYS confined youths.²⁸ DYS is also trying to provide some exposure to vocational and employability-related training, although these opportunities remain limited.²⁹

Instruction in the core subjects must be provided through curriculum frameworks, meaning teachers should be following an outline of course content meant to ensure that students throughout the state all cover the same basic material.³⁰

To this end, DYS requires that each DYS contracted residential program submit its educational curriculum to the local education agency covering the geographic location of the program for approval.³¹ In gaining such approval, the education authority is certifying that the residential program’s curriculum is on par with that of the school district’s public schools.³²

25 Mass. Gen. L. ch. 69, § 1D.

26 Mass. Gen. L. ch. 71, § 3.

27 Katie Martin, *The Role Education Plays in Massachusetts Youth Crime Prevention* (Aug. 2006) at 14 (on file with MHLAC).

28 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

29 University of Massachusetts Donahue Institute, *Evaluation of the Department of Youth Services Education Initiative Final Report* (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 36.

30 Mass. Gen. L. ch. 69, § 1E.

31 DYS, *Educational and Vocational Services*, <http://www.mass.gov/dys>.

32 Mass. Gen. L. ch. 76, §1 (school committees shall approve a private school when satisfied that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town).

DYS also created tools for use by teachers. DYS developed five-day teaching modules called “mini-units” in each subject area that are intended to be consistent with the Massachusetts curriculum frameworks.³³ DYS also developed Instructional Guides in English, math, science and U.S. History I to assist teachers in aligning their content with state standards.³⁴

Limited resources historically meant that DYS had inadequate classroom supplies.³⁵ DYS began addressing this situation in 2003. For example, since 2003 DYS has had E-Rate which provides internet access in classrooms and provides distance learning.³⁶ Similarly, spending for materials and supplies (such as books, software, workbooks and lab materials) increased substantially beginning in 2004-2005.³⁷

Ongoing assessment of students

In addition to being taught the content and achievement standards, Massachusetts public school students must be periodically assessed against those standards through formal testing.³⁸

As mentioned above, DYS assesses youths upon arrival to DYS using the TABE pre-test. In addition, prior to release to the community, DYS involved youths are given the TABE post-test to determine level of academic functioning.³⁹

This obligation for periodic assessment includes a right to take the Massachusetts Comprehensive Assessment System (MCAS) tests. Like all other students, youths in DYS custody are required to take the MCAS tests administered in their grades.⁴⁰ DYS reports that it administers the MCAS test to all eligible youths in DYS education programs.⁴¹

33 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007); University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 11.

34 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 11.14; see also Commonwealth Corporation, DYS Teacher Resources, <http://www.commcorp.org/dys/resources.html> (visited 10/30/09).

35 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

36 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

37 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 18.

38 Mass. Gen. L. ch. 69, § 1D.

39 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

40 Massachusetts Department of Education, Massachusetts Comprehensive Assessment System: Frequently Asked Questions, #6, <http://www.doe.mass.edu/mcas/about1.html?faq=6> (citing the Massachusetts Education Reform Law of 1993).

41 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 62-63.

Teacher certification

Massachusetts public school teachers must meet certain certification requirements.⁴² DYS run or contracted programs must meet state requirements for certification of teachers (i.e., educators must hold a valid Massachusetts educator's certificate).⁴³

Prior to 2007, limited resources meant that teachers in DYS programs had not been paid well historically (making it difficult for DYS and its education providers to retain qualified, certified teachers). In 2007, DYS requested and obtained funds to improve teachers' salaries and intends to continue these efforts.⁴⁴

DYS now also requires that all teachers meet the teacher licensure requirements of DESE and the No Child Left Behind Act of 2001.⁴⁵ In fiscal year 2007, of 235 teachers in the DYS education system, 11% were not licensed, 31% held preliminary licenses, 22% held initial licenses, and 36% held professional licenses.⁴⁶ DYS and its education providers assist teachers in upgrading qualifications.⁴⁷

Student-teacher ratio

The average student-teacher ratio in most DYS programs is 8:1, but in some it can reach 25:1.⁴⁸

Learning time

Massachusetts secondary students must attend school for a minimum of 990 hours per 180 days.⁴⁹ Youths in DYS custody have this right.

DYS run or contracted programs exceed this standard by providing education for 10 months (180 days) during the year and at least 30 days

42 Mass. Gen. L. ch. 71, § 38G; 603 CMR 7.00 *et seq.*

43 Educational and Vocational Services, <http://www.mass.gov/dys>.

44 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

45 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

46 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 4.

47 DYS correspondence to MHLAC (Jan. 14, 2008).

48 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 4.


49 603 CMR 27.04(2); 603 CMR 27.03(3).

of July and August.⁵⁰ In addition, DYS requires its programs to provide a minimum of 27.5 hours of instruction per week.⁵¹

English language learners

Youths who do not speak English or whose native language is not English, and who cannot perform ordinary classroom work in English are considered English Learners under Massachusetts statute.⁵² This statute provides, among other things, that, unless a waiver is granted or the student is placed in a two-way bilingual program, students in grades 1 through 12 who are English learners must learn English through a sheltered English immersion program for a period of time not normally intended to exceed one school year.⁵³ After that year, students age 10 and older may seek waivers on an annual basis in order to continue the sheltered immersion program.⁵⁴

While DYS does not offer formal support services for youths whose English language skills are limited,⁵⁵ teachers are now being trained in English Language Learning (ELL) to address the needs of these youths.⁵⁶

 **Tip for families:** Tell DYS if your child's English language skills are limited.

Special education services

Both the federal Individuals with Disabilities Education Act (IDEA) and state law require that all eligible children with disabilities who need special education receive such services.⁵⁷ A youth in a DYS facility also has the right to receive special education services, if he is eligible for such services.

50 Memorandum from Rose Milas, Education Administrator, DYS to DYS/Provider Program Directors et al., School Year 2006-2007 Schedules and Information, July 31, 2006, at 1; A 2008 site visit report indicated that DYS provides education for 217 days per year. "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/pnationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 4.

51 Memorandum from Rose Milas, Education Administrator, DYS to DYS/Provider Program Directors et al., School Year 2006-2007 Schedules and Information, July 31, 2006, at 1.

52 Mass. Gen. L. ch. 71A, § 2(d).

53 Mass. Gen. L. ch. 71A, § 4.

54 Mass. Gen. L. ch. 71A, § 5.

55 Katie Martin, The Role Education Plays in Massachusetts Youth Crime Prevention (Aug. 2006) at 18 (on file with MHLAC).

56 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

57 20 U.S.C. § 1412(a)(1)(A); Mass Gen. L. ch. 71B.

The responsibility to provide special education services to youths confined in DYS facilities falls upon DESE and the local education agency, and not upon DYS.⁵⁸ (The provision of special education is discussed in the next chapter, “Special Education Services During Confinement.”)

Education Liaisons

In each DYS region, DYS contracts with a provider agency to employ at least two Education Liaisons.⁵⁹ A liaison’s job is to ensure that DYS detained and committed youths residing in a certain geographic area receive the educational services to which they are entitled.⁶⁰

To this end, a liaison performs tasks including:

- develops, coordinates, and plans for delivery of educational services to youths committed to DYS;
- works closely with DYS Caseworkers, provider staff, and DYS District Managers to share caseload information and to identify and prioritize individual educational needs of each youth;
- works closely with Regional Office personnel and youths to ensure that regular education and special education needs are met and that school services or alternative services are in place when youths return to the community;
- works in partnership with Teachers and Education Coordinators to ensure quality educational services are delivered;
- plans in advance for a client’s re-integration into the community through coordination with Caseworkers and Educational Coordinators;
- provides technical assistance, consultation and in-service training to DYS and education provider personnel concerning state and federal regulations, policies, and procedures;
- follows established procedures and timelines for the request of school records and notice to Local Education Authorities (LEAs) regarding newly assigned and committed youths;
- establishes and maintains updated files and current computerized records for each youth following DYS procedures;
- prepares DYS school transcripts for all applicable youths and forwards each transcript to the appropriate LEA for determination of credits and grade placement;

⁵⁸ 603 CMR 28.06(9); 603 CMR 28.10(3)(c).

⁵⁹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 16.

⁶⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 16.

- refers all appropriate youths for Chapter 766 (transition planning) evaluations, educational team meetings, and LEA assignments as necessary;
- facilitates the development of Individual Educational Plans (IEP's) for DYS special needs youths;
- coordinates records and information, advocates for, and attends hearings regarding suspension or expulsion of youths from LEA's;
- assists DYS in resolving non-compliance issues by the LEA or issues involving mediation or special education appeals.

DYS Education Liaisons has additional specific tasks:

- request educational records from the home district for a committed student within 72 hours of receiving DYS Regional Office notification (which must occur within 48 hours of commitment);⁶¹
- if records are not received within two weeks, follow up until they obtain them;⁶²
- access a youth's education records via the SIMS database operated by DESE;⁶³
- once records arrive, interpret all records (except special education records which are interpreted by SEIS) to determine what courses and MCAS tests a youth needs to take;⁶⁴
- create a graduation requirement sheet for teacher coordinators to use in placing students.

The DYS Transition Coordinator supervises the education liaisons.⁶⁵ The Transition Coordinator also works to make the transition process more consistent across the state and to establish protocols for student re-entry into public school districts.⁶⁶

Vocational education

As noted above, DYS includes vocational training to provide career readiness and employability as part of its regular programming for committed youths.⁶⁷

61 DYS Policy # 2.4.4(b) Educational Records (Jan. 1, 1999), Procedures, A.1, 2.

62 DYS Policy # 2.4.4(b) Educational Records (Jan. 1, 1999), Procedures, A.5.

63 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

64 Katie Martin, *The Role Education Plays in Massachusetts Youth Crime Prevention* (Aug. 2006) at 9 (on file with MHLAC); Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

65 University of Massachusetts Donahue Institute, *Evaluation of the Department of Youth Services Education Initiative Final Report* (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 40.

66 University of Massachusetts Donahue Institute, *Evaluation of the Department of Youth Services Education Initiative Final Report* (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 40.

67 DYS Correspondence to MHLAC (Jan. 17, 2008).

In 2006, working with Commonwealth Corporation, DYS initiated a pilot program, the Bridging the Opportunity Gap (BOG) Initiative, to develop local, partnership-based programs to promote career readiness and provide job training.⁶⁸ The concept is that these services will bridge the gap between the current status of youths in DYS custody and the goal of employment.⁶⁹

The BOG Initiative has funded programs in each DYS region, through community and faith-based organizations, Workforce Investment Boards and vocational-technical schools.⁷⁰ Through the initiative, youths have participated in internships, mentoring, job shadowing, and part and full-time employment.⁷¹

The BOG Initiative received subsequent rounds of funding and continues to assist DYS involved youths. The funding currently supports fifteen projects to assist in career-readiness and job training.⁷² The program reached 354 youths in 2007-2008.⁷³

Pursuing a Massachusetts State High School Equivalency Diploma (GED)

In addition to the above-described educational services, some DYS programs offer GED preparation to committed youths. As of February 2008, 42% of programs indicated some GED preparation materials or course offerings available to students.⁷⁴ And, 57% of respondents indicated that GED courses were at least somewhat available.⁷⁵

DYS detained youths are generally not eligible for these programs.⁷⁶ However, detained youths may be provided GED preparatory materials on a case by case basis.⁷⁷

68 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 37.

69 Commonwealth Corporation, Department of Youth Services' Bridging the Opportunity Gap Initiative, <http://www.commcorp.org/dys/aboutbog.html> (visited 10/30/09).

70 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 37.

71 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 38.

72 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 37.

73 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 37.

74 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 36-37.

75 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 37.

76 DYS Policy # 2.4.6(b) High School Equivalency ("GED") (April 15, 2008), Procedure, G.1.

77 DYS Policy # 2.4.6(b) High School Equivalency ("GED") (April 15, 2008), Procedure, G.2.

DYS looks at the following criteria when considering committed clients for enrollment in a GED class:

- age and residency;
- current placement and aftercare placement;
- cumulative school records and school transcript;
- number of credits earned, grade placement, high school graduation status, and achievement testing;
- special educational needs and Individual Educational Plan (IEP) status;
- classroom performance.⁷⁸

DYS policy outlines the procedures that must be followed in order to determine whether a youth is eligible to pursue a GED.⁷⁹

Programs that offer GED preparation must not cause financial hardship to the youth, and assistance is available.⁸⁰

Pursuing post-secondary education

In 2005 DYS signed an agreement with Bunker Hill Community College (BHCC) to provide post-secondary educational opportunities for youths in DYS custody who have already earned a high school diploma or GED.⁸¹ Through this partnership, youths enroll in the distance learning program at BHCC while residing in DYS residential programs.⁸² DYS pays the tuition costs for youths in DYS custody involved in this program.⁸³ DYS is working to expand these services through arrangements with other educational institutions.⁸⁴

78 DYS Policy # 2.4.6(b) High School Equivalency ("GED") (April 15, 2008), Procedure, B.1.

79 DYS Policy # 2.4.6(b) High School Equivalency ("GED") (April 15, 2008), Procedure.

80 DYS Policy # 2.4.6(b) High School Equivalency ("GED") (April 15, 2008), Procedure, H.2.

81 DYS, 2005 Annual Report (Mar. 2007) (describing Interdepartmental Service Agreement).

82 DYS, 2005 Annual Report (Mar. 2007).

83 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

84 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1.

CHAPTER 15:

SPECIAL EDUCATION SERVICES DURING CONFINEMENT

State and federal law requirements for special education.....	15.2
Free appropriate public education.....	15.2
The evaluation process	15.3
The team meeting to determine eligibility for special education services	15.4
An Individualized Education Program.....	15.4
A 504 plan.....	15.7
The role of Special Education in Institutional Settings (SEIS) in providing special education to youths in DYS custody.....	15.7
The role of the youth’s local school district in providing special education to youths in DYS custody	15.8
Additional responsibilities of DYS and SEIS for youths with special education needs	15.9
Special education residential schools	15.13

SPECIAL EDUCATION SERVICES DURING CONFINEMENT

Youths involved with DYS have the right to receive special education services. DYS reports that approximately 45% of committed youths have been identified as having special education needs.¹

State and federal law requirements for special education

In addition to the rights for all public school students, federal and state laws provide additional protection to youths with disabilities who are determined to be eligible for special education services. Special education is defined as

specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including – (i) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) instruction in physical education.²

Free appropriate public education

To be eligible for special education, a Massachusetts child must:

- have a qualifying disability;
- because of that disability, be unable to progress effectively in school; and
- require either specially designed instruction or a related service that is necessary to access the general education curriculum.³

Qualifying disabilities include: autism, developmental delay, intellectual impairment, sensory impairment, neurological impairment, emotional impairment, communication impairment, physical impairment, health impairment, or specific learning disability.⁴

The federal Individuals with Disabilities Education Act (IDEA)

1 DYS, Public Information Packet (2009) at 2.

2 20 USC § 1401(25); 34 CFR § 300.39.

3 Mass. Gen. L. ch. 71B, § 1; 603 CMR 28.02(9) (definition of “eligible student”). Effective progress is defined at 603 CMR 28.02(18).

4 34 CFR § 300.8; 603 CMR 28.02(7) (definition of “disability”). Massachusetts special education statute is consistent with the IDEA with respect to the definition of disability. *Compare* Mass. Gen. L. ch. 71B, § 1 *with* 20 U.S.C. § 1401(3).

requires that states have policies and procedures to ensure that a free appropriate public education (FAPE) is provided to all eligible children with disabilities who need special education.⁵

The right to FAPE includes meaningful opportunities to learn in the general curriculum that all students follow. Youths receiving special education services must receive a full, high-quality education, with qualified instructors, in an educational setting.⁶

In general, the school district's obligation to provide FAPE continues until an eligible youth turns 22 or until the youth has received a regular high school diploma or its equivalent, whichever comes first.⁷ However, the school district may be obligated to continue to provide special education even in some cases in which the youth has met the requirements for a regular high school diploma (i.e., completing the local school district's coursework requirements, passing MCAS tests) if the youth is not also making progress on (or has not completed) his IEP goals and objectives.⁸ In such a case, a school district still may have to provide a certain minimum level of special education services for a period of time.⁹ However, if the youth has graduated, he is no longer entitled to special education services.

The evaluation process

If a parent believes his or her child needs special education services, the parent can request that the school district conduct a special education "core" evaluation.¹⁰ The results will help determine whether the youth is eligible for special education services.¹¹ A core evaluation must assess both educational need and all areas of suspected disability.¹² The district may also decide to include health, psychological and home assessments.¹³

If a parent wants a second opinion, the parent can seek an independent evaluation.¹⁴ For families with limited income, the school district may be required to pay for part or all of this second evaluation.¹⁵

5 20 U.S.C. § 1412(a)(1)(A). FAPE is defined at 20 U.S.C. § 1401(9); 34 CFR § 300.17.

6 20 U.S.C. § 1412(a); *see also* Mass. Gen. L. ch. 71B, § 1.

7 20 U.S.C. § 1412; 34 CFR § 300.102; Mass. Gen. L. ch. 71B, § 1; 603 CMR 28.02(9) (definition of "eligible student"). A regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, including a certificate or a GED. 34 CFR § 300.102(a)(3)(iv).

8 *In re: Quabbin Regional School District*, 11 MSER 146, 153 (Aug. 16, 2005) (decision of Massachusetts Bureau of Special Education Appeals).

9 *In re: Quabbin Regional School District*, 11 MSER 146, 153 (Aug. 16, 2005) (decision of Massachusetts Bureau of Special Education Appeals).

10 20 U.S.C. § 1414(a)(1)(B); 603 CMR 28.04(1).


11 20 U.S.C. § 1414 (a)(1)(C)(i)(I); 603 CMR 28.04(2).

12 34 CFR § 300.304(c)(2), (4); 603 CMR 28.04(2)(a).

13 603 CMR 28.04(2)(b).

14 20 U.S.C. § 1415 (b)(1); 603 CMR 28.04(5).


15 603 CMR 28.04(5)(c).

 **Tip for families:** A request for a special education core evaluation may be submitted to the school district responsible for the youth at any time, even after commitment to DYS.

The team meeting to determine eligibility for special education services

After the core evaluation or evaluations are complete, the school will hold a team meeting to determine eligibility for special education services.¹⁶ A team is a group of persons, meeting requirements of federal special education law, who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, or determine placement.¹⁷ The parent or legal guardian is a member of the team.¹⁸

If a parent or legal guardian cannot attend in person, the school district must offer the option of participating by telephone.¹⁹

 **Tip for families:** While it is best to attend a team meeting in person, if you are absolutely unable to participate in person, request to participate by telephone.

The parent or legal guardian may appeal the decision if the team finds the youth ineligible.²⁰

An Individualized Education Program

If the youth is found eligible, he is entitled to an Individualized Education Program (IEP), a plan describing the services to which he is entitled.²¹ The IEP must be individualized to the youth's particular needs and must describe all the educational and related services that will be provided.²² The IEP is drafted by the IEP team.

The IEP must designate the type of school setting appropriate for the student. All students have the right to attend school in the least

¹⁶ 20 U.S.C. § 1414(b)(4)(A); 603 CMR 28.05(1).

¹⁷ 20 U.S.C. § 1414 (d)(1)(B); 34 CFR § 300.321; 603 CMR 28.02(22) (definition of "team").

¹⁸ 34 CFR § 300.322; *see also* 603 CMR 28.02(22).


¹⁹ 20 U.S.C. § 1414 (f); 34 CFR §§ 300.322(c),300.328.

²⁰ 20 U.S.C. § 1415(b)(6)(A).

²¹ 20 U.S.C. § 1414(d)(1)(A); 34 CFR § 300.320; 603 CMR 28.05(3).

²² 20 U.S.C. § 1414(d)(1)(A)(i); 34 CFR § 300.320(a)(4); 603 CMR 28.05(4).

restrictive environment.²³ This means that students must be educated, to the greatest extent possible, with students without disabilities.²⁴ This principle is known as inclusion. The school must provide the necessary services for this to happen and these services must be described in the IEP.²⁵

 **Tip for families:** If your child's evaluations suggest particular accommodations or services, you must insist that those accommodations or services appear in the IEP. If they are not included in the IEP, the school district is not obligated to provide them.

In care and protection cases where a youth has been removed from the custody of his parent(s), the Juvenile Court may appoint a Guardian ad litem/Education Surrogate to make special education decisions on behalf of the youth. The surrogate must be certified to act as an Education Surrogate Parent (ESP).²⁶

If a surrogate has been appointed, that surrogate assumes the parent's role for purposes of special education decision-making. For example, the surrogate may review educational records, participate in team meetings, consent to a special education evaluation, accept or reject a proposed educational program, request an independent evaluation, and request mediation or a hearing from the Department of Elementary and Secondary Education to resolve special education disputes. However, a surrogate does not have the authority to litigate educational issues in state or federal court.

Educational surrogates are only available to youths in the custody of the Department of Children and Families (DCF). However, some DYS involved youths have, at some point, been placed in DCF custody. If DCF still has custody, the youth may still have an education surrogate.

If a parent or legal guardian is unhappy with a youth's IEP, either at the time it is being developed or at any point after, the parent or legal guardian may submit a request to the school district that changes be made to it. The parent or legal guardian may request that changes be made to the youth's IEP at any time, even if the IEP was previously accepted.²⁷


23 20 U.S.C. § 1412 (a)(5)(A); 34 CFR § 300.114; 603 CMR 28.06(2)(c).

24 20 U.S.C. § 1412 (a)(5)(A); 34 CFR § 300.114(a)(2); 603 CMR 28.06(2)(b), (c).

25 20 U.S.C. § 1414 (d)(1)(A)(i)(IV)(cc); 34 CFR § 300.114(a)(2)(ii); 603 CMR 28.06(2)(d).


26 20 U.S.C. § 1415(b)(2)(B); 603 CMR 28.07(7); www.espprogram.org/documents/ESPPbrochuresecure.pdf.


27 20 U.S.C. § 1414(a)(2)(A)(iii); 603 CMR 28.07(1)(a)(1).

 **Tip for families:** If your child has an IEP, you should regularly evaluate whether your child’s special education needs are being met. To do so, ask the following questions.


- Is your child getting all the academic services listed on the IEP?
- Is your child getting the related services listed in the IEP?
- Is the education being delivered in the manner specified in the IEP?
- Is your child getting individualized services?
- Does your child have access to the full curriculum?

If a youth has received special education in the past, he has the right to receive special education while confined in DYS.

 **Tip for families:** You should make sure that your child’s IEP is up-to-date and fully reflects his educational and social needs.

 **Tip for families:** The process of obtaining an IEP from a local school district takes time. If you have a copy of your child’s IEP, provide it to DYS and to your child’s teacher so that your child can begin receiving the appropriate services immediately.


Even if a youth has not received special education in the past, he can receive special education services while in DYS if he needs them. Many children come into DYS not having an IEP but needing one. The youth’s parent or guardian, DESE, another state agency (such as DYS), the youth’s local school district, or any person in a caregiving or professional position may initiate a request for an initial evaluation to determine if the youth is a child with a disability.²⁸

 **Tip for families:** If your child was not doing well in school before coming to DYS, ask the DYS caseworker, local school district, or Special Education in Institutional Settings (SEIS) (discussed below) to arrange for a special education evaluation (if he has not had one) or an IEP team meeting (if he already has had an evaluation). More information on how to do this is provided below.

28 20 U.S.C. § 1414(a)(1)(B); 603 CMR 28.04(1).

A 504 plan

If a youth is found ineligible for special education services, he may still be eligible for services under Section 504 of the Rehabilitation Act of 1973.²⁹ Section 504 provides that school districts must provide a free appropriate public education to students in their districts.³⁰ An appropriate education is an education and related aids and services designed to meet the individual educational needs of a child with a disability as adequately as the needs of non-disabled children are met.³¹ If a youth qualifies for these services, the school should draft a “504 plan” listing the services and accommodations that will be provided to the youth.

 **Tip for families:** If your child has a 504 plan, provide it to your child’s DYS caseworker and follow up to ensure that it is being implemented in each educational setting.

The role of Special Education in Institutional Settings (SEIS) in providing special education to youths in DYS custody

Special education instruction in DYS facilities is provided by Special Education in Institutionalized Settings (SEIS), part of DESE.³² Until mid-2007, SEIS was called Educational Services in Institutional Settings (ESIS).

DESE contracts with a special education provider, which hires special education teachers to provide these services.³³ Although DYS provides education year round, SEIS teachers teach only 180 days per year (September through June).³⁴

SEIS staff persons are assigned to all sites where DYS provides a general education program: detention units, committed units/long term, committed units/short term, and short-term group care.³⁵ As of fall of 2007, SEIS had staff at every DYS facility.³⁶

29 29 U.S.C. § 794.

30 34 CFR § 104.33(a).

31 34 CFR § 104.33(b).

32 Mass. Gen. L. ch. 71B, § 12; 603 CMR 28.06(9). See also DESE, Technical Assistance Advisory SPED 2012-1: Certain IEP Services Not Provided by the Department in DYS Institutional Settings, http://www.doe.mass.edu/sped/advisories/12_1ta.html.


33 DESE’s special education provider is the Collaborative for Education Services (CES).

34 SEIS school year calendars (on file with MHLAC).

35 DESE, Special Education in Institutional Settings, <http://www.doe.mass.edu/seis/programs.html>.


36 Telephone conversation with Elizabeth Keliher, Legal Office, DESE (Nov. 29, 2007).

DYS youths with disabilities often receive special education instruction from SEIS staff in separate classrooms. When DYS youths with disabilities receive education in DYS general education classrooms, the general education teachers are responsible for implementing the youths' IEPs.

 **Tip for families:** If your child has an IEP, but is not receiving appropriate special education services while confined to DYS, investigate why this is the case. Review your child's IEP to see what services are required. Make sure DYS and educational staff persons are aware of and are following your child's IEP. Check to see whether SEIS is in fact providing services at your child's facility. Ask which of your child's classes are taught by SEIS teachers. If SEIS and the local school district are not adequately serving your child's special education needs, call the DYS Education Liaison (described later in this chapter), the DESE SEIS program, or the local school district's special education department. You might also consider seeking assistance from a lawyer or outside advocate.

The role of the youth's local school district in providing special education to youths in DYS custody

While SEIS provides special education instruction to youths in DYS custody, the student's local school district retains both programmatic and fiscal responsibility for the student.³⁷ Thus, the local school district retains responsibility for evaluating, developing, and issuing the IEP and for providing notices associated with the IEP process.³⁸ The DYS program and SEIS staff should assist the school district in the evaluation process by conducting educational assessments and by providing other information used to develop the IEP.³⁹

 **Tip for families:** Make sure each of your child's teachers has a copy of a current, appropriate IEP. If the IEP is not current or appropriate, ask that a IEP team meeting be convened.


Sometimes, SEIS will not have the resources to meet the demands

³⁷ Mass. Gen. L. ch. 71B, § 12; 603 CMR 28.06(9)(a); 603 CMR 28.10(3)(c).

³⁸ 603 CMR 28.06(9)(a); 603 CMR 28.10(3)(c).


³⁹ DESE, Educational Services in Institutional Settings (Oct. 2005) at 9, <http://www.doe.mass.edu/mailings/2005/cm110705.pdf>.

of an IEP. SEIS is allowed to “determine based upon resources the type and amount of special education and related services that it provides.”⁴⁰ If SEIS does not have the resources to provide required services, the school district where the father, mother or legal guardian resides must arrange and pay for those services.⁴¹

 **Tip for families:** If you notice that the services listed in your child’s IEP are not being provided, you should contact your child’s school district to request that those services be provided. You also should ask SEIS and DYS to contact the school and assist you in pursuing those additional special education services.

Additional responsibilities of DYS and SEIS for youths with special education needs

DYS and SEIS have written procedures which impose requirements on staff of both agencies.⁴²

 **Tip for families:** Many of the responsibilities described in these procedures as belonging to DYS are fulfilled by a DYS Education Liaison. DYS has at least two Education Liaisons in each DYS region. The liaison’s job is to ensure that detained and committed youths receive the educational services to which they are entitled. To this end, DYS Education Liaisons interact with local school districts, SEIS, DYS staff, youths and families. Further liaison responsibilities are described in the preceding chapter entitled “Education Services During Confinement.”

These processes are divided into two documents based on whether the youth is detained or committed to DYS:

- 1) Agency Coordination Process for Youth in DYS From Detention Until Commitment; and
- 2) Agency Coordination Process for DYS Committed Youths Identified as Eligible for Special Education.

The processes describe responsibilities of many individuals. These include DYS staff:

⁴⁰ 603 CMR 28.06(9).

⁴¹ 603 CMR 28.06(9)(c).

⁴² DYS and DESE, The Agency Coordination Process for DYS Youth Eligible for Special Education – Detention and Commitment (draft Oct. 6, 2009)

- DYS Education Liaison (discussed above);
- DYS Teacher Coordinators (in multiple DYS locations);
- DYS Caseworker

and SEIS staff:

- SEIS Education Team Liaisons (ETL) (in multiple DYS locations);
- SEIS Teachers (in multiple DYS locations)
- SEIS Area Principal;
- SEIS Area Administrative Assistant.

The following description provides a summary of the two processes. (This description does not include every detail of the processes, but are edited for simplicity.)

Agency Coordination Process for Youth in DYS From Detention Until Commitment

- Step I -- Each week, DYS provides DESE with a report of the names of all youths who DYS has detained for 7 days.⁴³ Then, DESE uses its own student database called SIMS to identify, for both DYS and SEIS, students eligible for special education services.
- Step II -- If a special education student is coming from another SEIS placement, the new SEIS ETL obtains the records from the old SEIS ETL. Otherwise, the SEIS Area Principal sends a letter (within 2 working days of receiving the data) to the student's local school district requesting records.
- Step III – SEIS sends a list of new special education students to the DYS Education Liaison. The liaison tells SEIS each student's program placement.
- Step IV – When the SEIS ETL receives the student records from the LEA, he or she provides a copy of the IEP to the SEIS Teacher and the DYS Teacher Coordinator at the program.
- Step V – If an IEP is received, the DYS Teaching Coordinator, SEIS Teacher and SEIS ETL meet to review it and determine how to provide services. If needed, Steps IV-VI of the process for committed youth are followed (see below).

Agency Coordination Process for DYS Committed Youth Identified


⁴³ Email communication from Jan Avallone, Director of Special Education in Institutional Settings, DESE to MHLAC (Nov. 23, 2009).

as Eligible for Special Education

- Initial Action -- The DYS Assessment Unit Teacher Coordinator (or another source) notifies the DYS Education Liaison that a youth has been committed to DYS. Once the DYS Education Liaison confirms the youth's special education status, the SEIS ETL sends the special education records to the DYS Education Liaison and the DYS Assessment Unit SEIS ETL, DYS Assessment Unit Teacher Coordinator, and SEIS teacher. If new records are needed, the DYS Education Liaison will request records from the local school district.
- Step I – When the DYS Education Liaison gets records from the school district, the liaison forwards them to the DYS Assessment Unit Teacher Coordinator and the DYS Assessment Unit SEIS ETL (including special education records). The DYS Assessment Unit SEIS ETL forwards a copy of the IEP to the Assessment Unit Teacher Coordinator and the SEIS Teacher. If the IEP is unsigned or expired, the SEIS ETL contacts the school district.
- Step II – At or prior to the youth's staffing, the DYS Education Liaison will give copies of the school records and IEP to the DYS Caseworker. Once DYS determines the youth's placement, the DYS Assessment Unit Teaching Coordinator will notify the SEIS ETL of that decision. The SEIS ETL will send the IEP to the SEIS ETL and the DYS Teaching Coordinator serving the new placement.
- Step III – When the student's IEP arrives at the program, the DYS Teaching Coordinator, the SEIS Teacher and the SEIS ETL meet to review the IEP and determine how to provide services (and/or if there are services they can't provide).
- Step IV – If the SEIS ETL and the SEIS Teacher determine that SEIS cannot provide a service or services in the IEP, the SEIS ETL notifies the DYS Education Liaison and the school district in writing and informs the DYS Teaching Coordinator. The SEIS ETL follows up with the school district, in coordination (by monthly meeting) with the DYS Education Liaison, to ensure that the district provides these services.
- Step V – If, when the student arrives at his program, he still has an unsigned or expired IEP, or his special education records haven't been received, the SEIS ETL discusses this matter with the DYS Education Liaison and contacts the school district to ensure that the district takes the appropriate steps to resolve the problem. Parties may need to schedule a team meeting (see Step VI). If the problem

isn't solved, the SEIS Principal will refer the matter to the unit at DESE that resolves such problems, Program Quality Assurance Services.

- Step VI – Several things may happen once the SEIS ETL asks the school district to address the problem of an unsigned or out of date IEP.
 - If the school district sends the SEIS ETL a current, signed IEP, the SEIS ETL, SEIS Teacher and DYS Teaching Coordinator meet and implement the IEP.
 - If parents/guardian/student age 18 or older, the school district, and other education team members agree, the team may amend the current IEP in light of the DYS placement, and then the SEIS ETL, SEIS Teacher and DYS Teaching Coordinator meet and implement the IEP.
 - If the school district waives a scheduled student assessment and extends the last signed IEP and the parents/guardian/student age 18 or older agree to that, then the SEIS ETL, SEIS Teacher and DYS Teaching Coordinator meet and implement the IEP. In this case the school district must schedule an education team meeting within 45 school working days so that the team may determine the student's continued eligibility for special education services and develop a new IEP. Once the parents/guardian/student age 18 or older sign the new IEP, the SEIS Teacher and the DYS Teaching Coordinator meet, and then they implement the IEP.
 - If the school district decides to assess the student, with appropriate consent by the parents/guardian/student age 18 or older consent, the school district must schedule an education team meeting within 45 school working days of receipt of the assessment. At the team meeting, the team reviews and determines special education eligibility. If the student is found eligible, the team develops a new IEP, which, if accepted by parents/guardians/student age 18 or older, is implemented. If the student is found ineligible, the parents/guardian/student age 18 or older may appeal.

 **Tip for families:** Delivering quality special education is a challenge. However, the law is clear regarding the responsibilities of the local school district, SEIS, and DYS to provide special education. Since lack of academic achievement is a leading indicator for court involvement and improving academic performance is the most effective intervention strategy, it is important for you to be involved in your child's education while he is at DYS. It is helpful to attend the monthly DYS treatment team meetings to understand the DYS educational program and your child's progress within it.

Special education residential schools

If a youth's educational and related service needs, as described in his IEP, cannot be met at a DYS run or contracted facility, the IEP team should convene to determine what type of placement would be needed to meet the youth's needs. The IEP team would determine what sort of educational placement is needed and would identify a particular placement. Also, the residential placement must accept the youth. Additionally, the parent or legal guardian would have to sign the IEP accepting that placement.

In order for a youth to be placed in such a community placement, the DYS treatment team would have to agree to release the youth to the community. In general, this would occur if the youth had fulfilled any time assignment given and successfully completed identified treatment. (It is possible that such a placement could occur prior to the fulfillment of time assignment and completion of treatment, but that event occurs rarely.) The placement must be agreed to by DYS, even when the youth is still under DYS supervision in the community.

If the IEP team had concluded that the placement was necessary for the youth to access education, the cost of *educational* services at such placements should be paid for by the local education authority (LEA). If the IEP team concludes that residential services (in addition to educational services) are needed to effectively access education, the cost of *residential* services should be paid for by the LEA as well. In rare cases, DYS shares the cost of a placement with another entity, such as a local school district.⁴⁴ Due to the high expense of such programs and the scarce funding for them, such placements happen infrequently.⁴⁵

⁴⁴ DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007). If such a placement is not secure but is an open door setting, DYS would require a youth to sign a grant of conditional liberty prior to going to the placement. DYS correspondence to MHLAC (Jan. 14, 2008).

⁴⁵ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

👉 **Tip for families:** If you believe that your child requires more intensive mental health or educational services than those he is currently receiving from DYS, consider contacting the DYS caseworker, the SEIS program or asking for an IEP team meeting. You might also consider contacting one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

CHAPTER 16:

TRANSITION BACK TO THE COMMUNITY

Ninety-day re-entry planning	16.2
Short term track.....	16.2
Longer term track	16.4
Developing the service delivery and relapse prevention plans	16.5
Service delivery plan	16.5
Relapse prevention plan.....	16.7
Step down programs.....	16.8
Continuity of medical care.....	16.8
Detained youths.....	16.8
Committed youths.....	16.8
Continuity of a youth’s mental health and substance abuse care	16.9
Mental health care	16.9
Substance abuse care.....	16.11
Re-entry program for youths with serious and violent offenses.....	16.13

TRANSITION BACK TO THE COMMUNITY

DYS has responsibilities for committed youths transitioning back to the community.¹ Transition to the community may occur when a youth's term of commitment has ended at age 18 or 21 or prior to that time pursuant to a grant of conditional liberty, discussed below.²

It is important that DYS start work early on a youth's transition plan.³ This plan describes how the youth will transition from DYS confinement to the community. The plan should be completed by the DYS caseworker working with the youth and his parents or legal guardian. The plan should be individualized to the youth's needs.

Experts believe that appropriate planning for community re-entry begins upon admission to facilities of confinement. At DYS, re-entry planning should begin upon commitment.

Ninety-day re-entry planning

DYS has developed a transition planning process that includes a 90-day re-entry plan. This plan requires that the DYS caseworker schedule treatment meetings for all committed youths at 90, 60, and 30 days prior to release to the community.⁴ While the process is slightly different for youths who are committed on offenses where the time recommendation is less than six months than it is for youths who receive six months or more as their initial time recommendation, certain basics are the same.⁵ The steps within the short and longer term track are briefly outlined below.

Short term track

The shorter term track applies to all youths committed on offenses which have a time recommendation of less than six months.

- The caseworker, the youth, parent/legal guardian, and program clinical staff attend the 90-day prior to release treatment meeting.⁶ At the

1 See Executive Office for Administration and Finance, Policy Report: Moving Beyond Serving the Homeless to Preventing Homelessness (Oct. 2000) at 72 (discussing the purpose of the DYS transition planning system).

2 109 CMR 9.05(i)(c).

3 The DYS transition and aftercare plans should be distinguished from Chapter 688 transition planning that is required for severely disabled students who will need continuing adult services from one or more adult agencies. Chapter 688 of the Acts of 1983, codified in statute at Mass. Gen. L. ch. 71B, 12C and in regulation at 101 CMR 10.00. This Chapter 688 transition planning should begin at least two years before the end of special education services. In this process, the student's school system must refer the student to an appropriate human services agency, such as DMH or MRC, for transition planning.

4 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 13.

5 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31-32.

6 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

90-day prior to release treatment meeting, the treatment plan which outlines the goals for the youth during the residential placement is outlined.⁷ Additionally, the team develops the initial service delivery plan which outlines the services that will likely be needed in the community.⁸

- The caseworker, the youth, parent/legal guardian, and program clinical staff attend the 60-day prior to release treatment meeting.⁹ All elements of the service delivery plan are reviewed for status.¹⁰ At this point, the caseworker is responsible for referrals to support the service delivery plan.¹¹ The relapse prevention plan is presented and it is signed off at this point by the youth, his or her parent/legal guardian and the caseworker.¹²
- Prior to the 30-day meeting, the caseworker reviews assessments it has conducted: the Youth Level of Service/Case Management Inventory (YLS/CMI) and Child and Adolescent Needs and Strengths (CANS).¹³ The caseworker also reviews monthly treatment goals, all documents and test results completed during the assessment phase, and the DYS client file.¹⁴
- The District Manager, the program clinician, the youth, the parent/legal guardian, Education Liaison and the caseworker attend the 30-day prior to release treatment meeting at the DYS District or Satellite Office.¹⁵ The clinician may participate in this meeting through a conference call or by attending the meeting.¹⁶ The team conducts a thorough review of the status of all elements of the service delivery plan.¹⁷
- In the 30-days prior to release, DYS should schedule structured activities in the community.¹⁸ These activities should include a visit to the District or Satellite Office for orientation and/or initial participation in core and pro-social activities and services in accordance with the youth's service delivery plan.¹⁹

7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

8 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

9 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

10 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

11 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

12 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

13 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31-32.

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

15 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32, 44.

16 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

17 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

18 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

19 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

Longer term track

The longer term track applies to all youths committed on offenses which have a time recommendation of six months or more.

- As discussed in Chapter 9, Placement, DYS conducts monthly treatment reviews for all youths in residential treatment.²⁰ The treatment reviews include: the youth, the assigned unit clinician, the Clinical Director of the unit, an educational liaison from the unit, medical staff, administrative staff, the Caseworker and the youth's family.²¹ At these meetings, monthly treatment goals will be reviewed in the following areas: counseling, education, medical and unit behaviors.²² These goals will be reviewed and revised monthly as needed and will serve as the basis for the service delivery plan when the youth enters the community.²³
- In preparation for the treatment meeting held 90 days prior to release, the DYS caseworker re-administers the YLS/CMI and reviews all documents and/or tests completed during the assessment process.²⁴ The CANS is also readministered.²⁵
- The caseworker, the youth, parent and program clinical staff attend a treatment meeting 90 days prior to release.²⁶ A full review is conducted of the youth's progress in the program.²⁷ The YLS/CMI is reviewed at this stage to see if progress has in fact been made.²⁸ In addition, the CANS assessment report is reviewed.²⁹ If program participation and the YLS/CMI and/or CANS indicate that progress has been made, the team develops the service delivery plan for community placement.³⁰ The youth also will present his or her relapse prevention plan to the caseworker and parent/legal guardian.³¹ Some youths will not return home and a plan for another placement will be identified.³²
- The caseworker, the youth, parent and program clinical staff attend the 60 day prior to release treatment meeting.³³ The elements of the service delivery plan are reviewed for status and updated.³⁴ At this

20 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

21 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

22 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

23 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

24 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

25 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

26 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

27 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 32.

28 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

29 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

30 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

31 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.


32 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.


33 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

34 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

point, the caseworker is responsible for all referrals to support the service delivery plan.³⁵ The relapse prevention plan is presented and signed off at this point by the youth, his or her parent/legal guardian and the caseworker.³⁶

- The District Manager, the program clinician, the youth, the parent/legal guardian, Education Liaison, community-based service providers, and the Caseworker all participate in the 30-day prior to release treatment meeting.³⁷ The meeting is held at the DYS District or Satellite Office.³⁸ The clinician may participate in this meeting through a conference call or by attending the meeting.³⁹ The team thoroughly reviews the status of all elements of the service delivery plan.⁴⁰
- In the 30-days prior to release, structured activities should take place in the community related to the service delivery plan.⁴¹ These activities should include a visit to the District or Satellite Office for orientation and/or initial participation in core and pro-social activities and services in accordance with the youth's service delivery plan.⁴²

 **Tip for families:** More information about the YLS/CMI and CANS assessments can be found in Chapter 7, Commitment and Assessment.

 **Tip for families:** You and your child should attend your child's staffing and classification meetings, monthly treatment review meetings, and the 90, 60, 30 day prior to release treatment meetings to work on your child's transition.

Developing the service delivery and relapse prevention plans

Service delivery plan

When a committed youth is returning to the community, DYS, the youth, and the family must update the youth's DYS service delivery

³⁵ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

³⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

³⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

³⁸ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

³⁹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

⁴⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

⁴¹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

⁴² DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 33.

plan. The re-entry process and the development and implementation of the service delivery plan and its companion relapse prevention plan, discussed below, must begin at least 90 days in advance of the youth's release to the community.⁴³

The service delivery plan should be individualized and should describe the services the youth will receive in the community. These services may be provided directly by DYS or by other entities.

The DYS service delivery plan can address any of the following areas, as needed:

- health insurance coverage;
- medical care;
- dental care;
- mental health and substance abuse treatment;
- crisis intervention;
- anger management groups;
- skills training groups;
- victim awareness groups;
- sex offender treatment;
- violent offender treatment;
- family counseling and referrals;
- respite care;
- vocational training;
- employment issues;
- educational services (including by addressing specific issues including transcript transfer, access to the local school district, pursuit of a Massachusetts State High School Equivalency Diploma (GED), and placement);
- living arrangements (including any foster care, independent living, or step down transition programs);
- parenting issues;
- substance abuse screening and testing;
- monitoring, including electronic monitoring;
- assistance in fulfilling any legal obligations including
 - victim notification requirements of Mass. Gen. L. ch. 258B, § 3(t);⁴⁴
 - warrant checks;
 - sex offender registry requirements of Mass. Gen. L. ch. 6, § § 178C-178P.⁴⁵


⁴³ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 6.

⁴⁴ DYS's Victim Services Unit is charged with providing information, support, and notification to victims of juvenile crimes whose offenders are in DYS custody.

⁴⁵ See DYS, Discharge Planning, Discharge Manual prepared for the Executive Office of Administration and Finance Task Force on Housing and Homelessness (draft 1999) at 1-2, 16-21.

As each youth's plan is individualized, it may or may not include these specific services, and it may include other services not listed here.

The service delivery plan of a youth in the community must be updated at least every six months or with every change in placement or level change.⁴⁶ DYS will hold periodic meetings in the community to review the youth's progress and the service delivery plan.⁴⁷

 **Tip for families:** Bring the above list when you meet with your child's DYS caseworker about transition planning. With your child and the caseworker, you should modify the DYS service delivery plan to address all relevant areas. Make sure the plan is individualized to address your child's needs, strengths, weaknesses and goals.

Relapse prevention plan

In addition to the service delivery plan, a youth will also develop a relapse prevention plan with his DYS caseworker.⁴⁸ DYS and the youth create this plan before the committed youth transitions back into the community from a residential facility. The purpose of the plan is to raise the youth's awareness of pressures and forces that got the youth into trouble in the first place and help the youth create ways to avoid or cope with them.⁴⁹

The plan can encompass any struggle the youth faces upon reentry and incorporates all the coping mechanisms that the youth has learned in the residential treatment program, in addition to services arranged to assist the youth.⁵⁰ The plan is presented and signed off on at the 60 day prior to release treatment meeting.⁵¹ DYS expects that a youth will continue to work on and refine his relapse prevention plan up to the time of transition to the community.⁵²

Some of the relapses a plan is designed to avoid are continued negative behaviors in the community such as violence, new arrests or renewed criminal activity, substance abuse, conflicts with family members, and idle non-productive time.⁵³

46 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 47.

47 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

48 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.

49 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

50 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

51 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

52 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 31.

53 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

The plan can include whatever services are applicable for a particular youth.⁵⁴ For example, the avoidance or coping mechanisms can include working with a DYS Family Intervention Specialist in the community, attending anger management groups, pursuing a GED and a job, attending substance abuse counseling, continuing work on Dialectical Behavior Therapy (DBT) skills, and avoiding old hangouts and negative activities.⁵⁵

Step down programs

During transition planning, DYS will identify an appropriate placement for the youth. This placement may be the youth's home, but it may be to a DYS or non-DYS community placement. One option DYS has to address a client's need for additional treatment prior to full release to the community is the use of "step down" programs such as short term group care, transitional living programs and other community-based residential settings.⁵⁶ DYS uses such short term step-down programming to quickly create ties with identified community services and resources.⁵⁷ Youths then move from such short term programs back to the community. For example, a youth may go to a substance abuse program for adolescents in Boston.

Continuity of medical care

Detained youths

Detained youths who are discharged from DYS with a current medical problem must, upon request, be referred to a previous provider or another community provider whenever possible, although DYS has no authority over a detained youth who posts bail.⁵⁸

Committed youths

DYS has a greater responsibility to committed youths released to the community. Part of the caseworker's responsibility is to ensure that the medical health of the youth is assessed before release and that identified needs are being met on an ongoing basis.⁵⁹

54 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

55 Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Jan. 28, 2010).

56 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 34.

57 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 34.

58 Correspondence from Department of Youth Services to MHLAC (Jan. 14, 2008).

59 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 36.

Medical staff are responsible for providing a referral for follow-up of any existing medical or psychiatric problems when a committed youth returns home and for the duration of the youth's commitment.⁶⁰ Such planning must include a referral to a local provider based on the particular problem and made in consultation with the parent or legal guardian and youth.⁶¹ A youth's caseworker should check with the last known DYS medical provider and/or DYS nurse case manager for information about the youth's community medical appointments.⁶²

During the 90 day re-entry period, DYS may bring in community clinicians who will work with a youth after his release from DYS.⁶³

Continuity of a youth's mental health and substance abuse care

Mental health care

A youth's DYS clinician updates the Child and Adolescent Needs and Strengths (CANS) tool as part of the DYS pre-release care planning process to ensure continuity of care with MassHealth providers.⁶⁴

The DYS caseworker and DYS clinician will talk to parents/legal guardians and the youth regarding relevant options for behavioral health services and which service(s) might best fit, including referral to Intensive Care Coordination (ICC) or other *Rosie D.* services available to Medicaid eligible youths.⁶⁵ With consent, the DYS caseworker and DYS clinician will arrange for a referral to the local provider, including a Community Service Agency (CSA), and provide follow-up as needed to ensure that an initial intake and service assessment occurs.⁶⁶ As DYS does not have legal custody of the youth, it is the parent or legal guardian who decides which service is best for the youth.⁶⁷ However, DYS can set conditions of release, such as mandating treatment participation as a condition of the

60 Correspondence from Department of Youth Services to MHLAC (Jan. 14, 2008); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 36.

61 Correspondence from Department of Youth Services to MHLAC (Jan. 14, 2008).

62 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 36.

63 Correspondence from Department of Youth Services to MHLAC (Jan. 14, 2008).

64 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 2.

65 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3.

66 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3.

67 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3.

youth's Grant of Conditional Liberty.⁶⁸ For more information on grants of conditional liberty, see Chapter 17, Grant of Conditional Liberty.

If a youth's updated CANS identifies the presence of a serious emotional disturbance, he should be considered for referral to ICC.⁶⁹ The DYS caseworker and DYS clinician will identify the CSA in the area that the youth is returning to and any specialized CSA in the region.⁷⁰

If a youth in a DYS staff-secure facility is found eligible for ICC or another *Rosie D.* Medicaid service, In-Home Therapy, enrollment in ICC may occur no more than 180 days prior to release from the setting.⁷¹ (Youths residing in hardware-secure DYS facilities are not eligible for MassHealth services until they leave the facility.⁷²)

Once the family and provider agree on a specific community-based behavioral health service, the provider will be named in the youth's service delivery plan.⁷³

During the pre-release process, if the family decides that ICC is an appropriate service, and the ICC service is medically necessary, the DYS caseworker and DYS clinician will meet with the care coordinator and family to document a planned transition to ICC.⁷⁴ Where possible, DYS will allow ICC care coordinators and family partners to hold care planning meetings on site at DYS staff-secure facilities during this transition.⁷⁵

The DYS caseworker and DYS clinician will participate in one or more transition meetings to ensure continuity of care and a smooth transition planning into community-based behavioral health services.⁷⁶ In addition, the DYS caseworker responsible for working with the youth when he returns to the community will participate in the transition planning process with the DYS clinician, the family and potential community-based behavioral health providers to support a smooth transition to the

68 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3.

69 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

70 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

71 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

72 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 8.

73 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

74 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

75 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

76 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

community.⁷⁷ For youths enrolled in ICC, the DYS caseworker will actively represent DYS on the youth's Care Planning Team, from commitment to discharge from DYS.⁷⁸

In addition to accessing MassHealth services, the transition period should be used to access other potential mental health services, including, when appropriate, DMH services.

If the youth is already a DMH client, DMH should participate in the transition back to the community from the earliest stages. If the youth is not a DMH client, but presents evidence of a serious emotional disturbance or major mental illness, pursuit of DMH eligibility should be considered, again at the earliest stages of release planning.

Substance abuse care

When a youth is scheduled to enter the community, DYS staff review the classification of a youth that was made after assessment. A youth who has been on the Prevention Track in his residential program will remain on that track in the community.⁷⁹ A youth who has been on the Treatment Track will be re-assessed by a MassHealth provider to determine if he still needs substance abuse treatment.⁸⁰ If the youth is determined to still need treatment, he will be placed again on the Treatment Track.⁸¹

As part of this review process, during the 90 days of re-entry planning, DYS or DYS provider clinical staff may administer a substance abuse screen, the Global Appraisal of Individual Needs -- Short Screen (GAIN-SS).⁸² This screen may prompt a review and/or modification of the youth's substance abuse assessment.⁸³

The DYS caseworker must ensure that substance abuse services are in the youth's service delivery plan.⁸⁴ To do so:

- the caseworker should document need of substance abuse services in

77 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7.

78 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 7-8. The DYS Strategic Direction details DYS participation on an ICC Care Planning Team. See DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 8.

79 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

80 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

81 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

82 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.1.

83 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.1.

84 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.1.

the service delivery plan at the 90-day re-entry meeting;⁸⁵ and

- DYS should ensure enrollment in MassHealth.⁸⁶

If the re-entry plan recommends substance abuse treatment, the caseworker shall:

- make a referral to a MassHealth provider that can provide outpatient substance abuse treatment;
- invite that provider to the 30-day re-entry meeting to make initial contact and set up an intake/assessment appointment within fourteen days of the youth entering the community;
- contact the Massachusetts Behavioral Health Partnership (MBHP) if no provider appears to be available.⁸⁷

Once the youth begins substance abuse treatment in the community, the DYS caseworker reviews the youth's plans and progress with the MassHealth provider at least every three months.⁸⁸

At six months, DYS and the MassHealth provider hold a case conference to evaluate the youth's progress. The provider, in consultation with DYS, then decides whether the youth needs to remain on the substance abuse Treatment Track or if he is ready to be placed on the Prevention Track.⁸⁹ After the initial six month period, the provider may alone make a determination to remove the youth from the Treatment Track.⁹⁰ DYS would then place the youth on the Prevention Track.⁹¹

For youths on the Prevention Track, there is no mandated substance abuse programming.⁹² However, DYS encourages participation in age-appropriate 12-step programming, groups, or any other substance abuse education.⁹³

For more information on mental health and substance abuse services once a youth returns to the community, see Chapter 19, Mental

85 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.2.a); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

86 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.2.b).

87 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), E.3.a)-d); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

88 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), F.3; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

89 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

90 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

91 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 35.

92 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 36.

93 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 36.

Re-entry program for youths with serious and violent offenses

Since 2003 DYS has operated a re-entry program for youths who have committed serious and violent offenses who are returning to the community. These youths have been deemed to pose a significantly higher risk of continued violence and serious crime after release from secure DYS facilities.⁹⁴ The goal of the program is to successfully integrate these youths back into the community following their sentences in secure treatment.

Involved youths receive supervision and support services through a local DYS District or Satellite Office.⁹⁵ Each youth is assigned a re-entry caseworker who works with the youth through his residential confinement and continues through a required period of community supervision.⁹⁶ Caseworkers, mentors, and residential program staff work collaboratively to identify community resources for education, vocational training, jobs programs, mental health and substance abuse services, housing when needed, recreational activities and other support services.⁹⁷

In Boston, for example, this program is called the Boston Juvenile Re-entry Initiative (BJRI). BJRI covers the Roxbury, Dorchester, Mattapan and South End areas of Boston.⁹⁸

BJRI is facilitated by four re-entry caseworkers.⁹⁹ Intervention begins during residential confinement and continues through a required period of community supervision.¹⁰⁰ The caseworkers and other partners coordinate a continuum of after-care programming, support, counseling, and other services.¹⁰¹ Partners may include community and faith-based service providers, the Boston Police Department, the Suffolk County House of Correction, Suffolk District Attorney's Office, and the U.S. Attorney's Office.¹⁰²

94 Correspondence from Department of Youth Services to MHLAC (Jan. 14, 2008).

95 See Massachusetts Executive Office of Administration and Finance, Policy Report: Moving Beyond Serving the Homeless to Preventing Homelessness, at 72 (Oct. 2000).

96 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, B.6.

97 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, D.1.

98 DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000), Procedures, D.2.

99 DYS panel presentation, "Overview of DYS" in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007).

100 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 31.

101 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 31.

102 DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 31.

Among some key elements of BJRI are the careful selection of highest risk, highest impact juvenile offenders, the use of an intense pre-release residential treatment to prepare youths for return to the community, a multi-disciplinary panel to review progress, release readiness and a plan with the youth before acceptance into the community phase of the program, intense case management which includes intensity of both services and accountability, the strong involvement and services to the entire family in collaboration with state and local family serving agencies, one-to-one mentoring by a caring responsible adult to increase positive adult involvement in the youth's life, a full array of available resources made available to the family on a priority basis to reduce barriers to success, and a multi-agency release and orientation process to include both law enforcement and community and faith based representatives.¹⁰³

The BJRI project, dealing intensively with the highest risk, highest impact offenders in the DYS caseload, has produced a recidivism rate of 28%, well below the rate of the general DYS population.¹⁰⁴

¹⁰³DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 31.

¹⁰⁴DYS, 2005 Annual Report (Mar. 2007), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2005.pdf, at 31.

CHAPTER 17:

GRANT OF CONDITIONAL LIBERTY AND REVOCAION

Agreeing to a grant of conditional liberty	17.2
Contents of a grant.....	17.2
Modification of the grant.....	17.4
Allegations of a violation of a grant of conditional liberty.....	17.4
Notice of hearing to revoke a grant of conditional liberty.....	17.7
The revocation hearing process	17.9
Findings of the Hearing Officer	17.11
Appeal of decision of the Hearing Officer	17.13
Commissioner’s Privilege.....	17.14
Confinement after a revocation hearing.....	17.15

GRANT OF CONDITIONAL LIBERTY AND REVOCATION

Even if a youth is committed to DYS custody until age 18 or 21, he will probably not be living in a secure setting all that time. When DYS decides to release a youth from a secure setting to a residential or community placement, this process is called a “grant of conditional liberty.”¹ Typically, this grant involves a release to live in a residential or community program or at home.

When DYS moves to withdraw consent for a youth to live in the community pursuant to a grant, it is known as a revocation of the grant.

The granting and revocation of conditional liberty is provided for by DYS statute and regulation.²

Agreeing to a grant of conditional liberty

A grant of conditional liberty permits a youth his liberty under DYS supervision and upon conditions that DYS believes are conducive to law abiding conduct and foster positive youth development.³ A grant is an agreement signed by the committed youth and his DYS caseworker. This contract establishes a set of rules that the youth must follow in exchange for being allowed to leave a secure setting and to support the youth’s individualized service delivery plan. The word “conditional” means that DYS can seek to revoke the grant if DYS believes that the youth failed to meet the conditions to which he and DYS agreed.⁴

Even if a youth has been granted conditional liberty, he remains committed to DYS. This means that the youth must continue to abide by DYS rules and any treatment plan. If he violates any of these rules, DYS can act to take the youth back into its physical custody.⁵ Being on a grant of conditional liberty is like being on parole in the adult correctional system but with added support toward treatment and positive development.

Contents of a grant

A grant of conditional liberty is an agreement between the youth

1 109 CMR 8.03.

2 Mass. Gen. L. ch. 120, § 6; 109 CMR 8.00 *et seq.* DYS drafted a policy on violation of conditional liberty, DYS Policy # 1.3.6(a), Violation of Conditional Liberty (Nov. 1, 2004), but it was never signed and is not in effect. Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

3 Mass. Gen. L. ch. 120, § 6(a).

4 Mass. Gen. L. ch. 120, § 6(d).


5 109 CMR 8.04.

and DYS and, as such, should contain language that both parties have agreed upon.

A grant generally includes standard language that DYS requires of every youth released on conditional liberty. Typical provisions include but are not limited to that the youth:

- not knowingly engage in gang activity;
- attend school regularly (or, in some cases, make efforts to find and maintain employment);
- comply with the requirements specific to his level of supervision;
- not use drugs or alcohol (or knowingly frequent places they are used or dispensed); and
- not use, carry or possess a weapon.⁶

In addition, the youth's caseworker may add other special conditions to a grant related to the youth's home or place of residence, work, travel, counseling, substance abuse treatment, mental health treatment, medical conditions, or persons with whom the youth may not have contact in support of the relapse prevention and service delivery plan.⁷ The grant also may contain special conditions to participate in wraparound services and other Children's Behavioral Health Initiative (CBHI) services available to MassHealth eligible youth with serious emotional disturbance.⁸ Special conditions also may include any condition that is reasonably related to the youth's personal safety.⁹

 **Tip for families:** When the grant of conditional liberty is discussed at your child's monthly treatment team meetings, your child will be asked to sign it. While DYS has provisions that it typically includes and may have other provisions that it would like to include, you and your child should evaluate all proposed provisions carefully before agreeing to them. Provisions should appear to be reasonable, relevant, and ones that your child will be capable of complying with. If the provisions do not meet these criteria, ask the treatment team that they be modified. If you cannot reach agreement on the terms, consider explaining your concerns to the DYS caseworker. If unsuccessful, consider contacting one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

6 DYS, Revocation Manual (June 30, 2003), at 18. The DYS Revocation Manual contains a complete list of standard conditions. DYS, Revocation Manual (June 30, 2003), at 18.

7 DYS, Revocation Manual (June 30, 2003), at 19.

8 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.resosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3.

9 DYS, Revocation Manual (June 30, 2003), at 19.

Modification of the grant

While a youth is on a grant of conditional liberty, his DYS caseworker may eliminate, change, or add any condition to the agreement if the caseworker believes such changes are necessary to pursue treatment goals, protect the community or effectively supervise the youth.¹⁰

The youth must acknowledge any change in writing and it must be included in the amended grant.¹¹

Allegations of a violation of a grant of conditional liberty

Violations of a grant of conditional liberty range from a new arrest to technical violations such as breaking curfew.¹² Violations are categorized in three categories with Category A being the most serious and Category C being the least.¹³

Category A violations include, for example:

- allegations of multiple Category B and C violations;
- arrest for a felony, involvement in repeated or serious gang activities; and
- possession of a weapon.¹⁴

Category B violations include, for example:

- arrest for a misdemeanor;
- destructive behavior;
- being deemed a risk to self or others;
- repeated positive urinalysis or other repeated drug/alcohol violations;
- loss of employment through negligence;
- repeated violation of conditions of grant;
- repeated failure to attend treatment groups;
- repeated truancy;
- involvement in gang activities;
- repeated failure to maintain scheduled contacts with DYS or vendor staff; and
- multiple Category C violations.¹⁵

¹⁰ Mass. Gen. L. ch. 120, § 6(d); DYS, Revocation Manual (June 30, 2003), at 19.

¹¹ DYS, Revocation Manual (June 30, 2003), at 19.

¹² DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

¹³ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

¹⁴ DYS, Revocation Manual (June 30, 2003), at 22. The DYS Revocation Manual contains a complete list.

¹⁵ DYS, Revocation Manual (June 30, 2003), at 22. The DYS Revocation Manual contains a complete list.

Category C violations include, for example:

- failure to contact staff pursuant to supervision plan;
- failure to answer staff or law enforcement officials truthfully;
- failure to comply with community service;
- failure to attend or behave at school;
- committing a curfew violation;
- violation of any condition of the grant; and
- failure to follow family rules.¹⁶

DYS does not always respond to a violation of a grant of conditional liberty by pursuing revocation of the grant. In fact, in most cases, DYS tries graduated sanctions first. Thus, when DYS considers the behavior in question to be a Category C violation, the response may be an increase in the level of community supervision.¹⁷ For further discussion of this practice, see the section “DYS Levels of Supervision” in Chapter 21, Supervision in the Community.

However, if DYS believes that a youth has violated his grant of conditional liberty and that it is necessary to revoke the grant, DYS may take other steps. This response occurs when DYS considers the behavior in question to be a Category A, B or C violation.¹⁸ As discussed below, DYS will pursue either a one to seven day administrative sanction or longer term confinement at DYS in these cases.¹⁹

The DYS caseworker first must investigate the allegations of a violation and complete a Conditional Liberty Violation Report (CLVR).²⁰ Any violation that the caseworker wants to use as evidence of a violation of the grant should be included in the report. The caseworker then makes a recommendation regarding revocation.²¹

As part of the caseworker’s investigation, the caseworker will seek to interview the youth, unless the allegations involve pending criminal charges.²² The caseworker must explain to the youth that any statements that the youth makes can be used against him at the revocation hearing.²³

¹⁶ DYS, Revocation Manual (June 30, 2003), at 23. The DYS Revocation Manual contains a complete list.

¹⁷ DYS, Revocation Manual (June 30, 2003), at 7.

¹⁸ DYS, Revocation Manual (June 30, 2003), at 7.


¹⁹ DYS, Revocation Manual (June 30, 2003), at 7.

²⁰ 109 CMR 8.06(1); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

²¹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

²² DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57; DYS, Revocation Manual (June 30, 2003), at 32.

²³ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57; DYS, Revocation Manual (June 30, 2003), at 33.

 **Tip for families:** Since statements can be used against him at revocation hearings, your child should think carefully before disclosing information to the caseworker. You can discuss with your child whether he has information that would explain his behavior and alleviate the caseworker's concerns. Then, you can evaluate whether disclosing this information would be in your child's best interest.

The caseworker also may seek to interview family members, probation officers, counselors, service providers, teachers, and other appropriate professionals.²⁴ The extent of the investigation will depend on the seriousness of the alleged violation, how complicated the facts are, and the time the caseworker has available.²⁵

The caseworker forwards his report, recommendation, and any supporting documentation to the DYS District Manager.²⁶ After reviewing these materials, the District Manager determines whether probable cause exists to believe the violation(s) of the grant of conditional liberty occurred.²⁷ If he believes that probable cause exists, the District Manager records this finding on a Probable Cause Determination Form.²⁸

If the District Manager finds that probable cause does not exist to believe that the youth violated a condition of his grant, the District Manager will not authorize a warrant for the youth's arrest.²⁹

If the District Manager finds that probable cause exists, the manager may either:

- conclude that the violation is minor enough to leave the youth in the community with a new grant of conditional liberty or increased supervision;³⁰ or
- decide the violation is serious enough to issue a parole violation warrant to remove the youth from the community and place him in a secure revocation unit pending a

²⁴ DYS, Revocation Manual (June 30, 2003), at 24.

²⁵ DYS, Revocation Manual (June 30, 2003), at 24.

²⁶ 109 CMR 8.06(1); see DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

²⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

²⁸ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57; see also 109 CMR 8.06(2) (Regional or Unit Director, after review of allegations written pursuant to 109 CMR 8.06(1), may make preliminary decision to have youth placed in a secure setting or shelter care pending a hearing, if reasonable to believe probable cause exists).

²⁹ Correspondence from Crispin Birnbaum, Department of Youth Services, to MHLAC (Apr. 16, 2010).

³⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

revocation hearing.³¹

Notice of hearing to revoke a grant of conditional liberty

If the District Manager finds probable cause and chooses to pursue a revocation of a grant of conditional liberty, DYS must hold a revocation hearing within seven calendar days of the youth's return to DYS custody.³²

DYS may postpone the seven-day rule for continuances or instances when the youth is not in DYS physical custody.³³ In such cases, the Hearing Officer must review all cases that are postponed or continued within 21 calendar days.³⁴ A youth may request postponement in the following instances: if he did not receive proper and timely notice of the hearing date; in order to obtain representation; in order to have needed witnesses attend; in order to properly prepare for the hearing; or in order to resolve a pending criminal case.³⁵

In addition, a Hearing Officer may continue a case in the following instances: if the youth did not knowingly and voluntarily sign the waiver; if the Hearing Officer has insufficient information upon which to conduct a meaningful hearing; to obtain an interpreter; to allow the youth to appear with a parent, guardian or attorney; if the youth has a medical problem preventing the Hearing Officer from proceeding; in order to render a decision on a request for discovery of information or the presence of adverse witnesses; when the youth is unavailable (but not simply because the youth chooses not to attend); or for any other good cause.³⁶

After the youth is returned to DYS custody, DYS must inform the youth of the alleged violations and all rights available to him.³⁷ As soon as possible after the youth's return to custody, the caseworker must give a copy of the Conditional Liberty Violation Report (CLVR) to the youth.³⁸ DYS must also give a copy of the CLVR to the parent or legal guardian

31 109 CMR 8.06(2); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57; DYS, Revocation Manual (June 30, 2003), at 25. While DYS's 2003 Revocation Manual provides for the option of leaving the youth in the community, pending the revocation hearing, DYS, Revocation Manual (June 30, 2003), at 25, DYS's 2010 Case Management Manual does not include this among the District Manager's choices. DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

32 109 CMR 8.09; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57; DYS, Revocation Manual (June 30, 2003), at 28.

33 DYS, Revocation Manual (June 30, 2003), at 28.

34 DYS, Revocation Manual (June 30, 2003), at 41.

35 DYS, Revocation Manual (June 30, 2003), at 39.


36 DYS, Revocation Manual (June 30, 2003), at 39-40.

37 109 CMR 8.07.

38 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57. The 2003 DYS Revocation Manual states that information about the alleged violations and rights must be provided within five calendar days of the youth's return to custody, DYS, Revocation Manual (June 30, 2003), at 32-33, but the newer DYS Case Management requirement should prevail.

and the youth's lawyer, if any.³⁹

The caseworker must meet with the youth to explain the allegations, the revocation hearing process, and the youth's right to present evidence in defense at the hearing.⁴⁰ Furthermore, the youth must be given a copy of a form providing notice of the right to a hearing.⁴¹

 **Tip for families:** You should ask DYS to provide you and your child with copies of all the forms, reports, and supporting documentation that relate to the alleged violation and/or the revocation process. While, as described in the next section, DYS must provide a copy of the supporting documentation to the youth at hearing, you want to review all this material in advance of the hearing. You should make sure you have the following documents:

- Grant of Conditional Liberty Agreement;
- Conditional Liberty Violation Report (CLVR);
- Any documents supporting the allegations in the CLVR;
- Probable Cause Determination Form (PCDF);
- Notice of Right to Hearing.

You also should ask DYS for the following documents, which the DYS 2003 Revocation Manual requires that DYS provide (as part of the revocation packet) to the hearing officer and youth at the hearing. DYS, Revocation Manual (June 20, 2003) at 33-34. You might want to seek out the documents even if DYS does not have them. These documents include:

- Any prosecutor or court accounts of the alleged violations;
- Any newspaper articles regarding the alleged violations;
- The mittimus for recommitment offenses which are part of the alleged violations;
- Recent psychological evaluations;
- Placement History or record of movement within DYS;
- CORI report;
- Incident reports that have occurred within the last sixty days prior to the hearing; and
- Prior revocation decisions or disposition orders.

³⁹ 109 CMR 8.07.


⁴⁰ DYS, Revocation Manual (June 30, 2003), at 32-33; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57 (does not mention explaining the allegations).


⁴¹ 109 CMR 8.07.

The revocation hearing process

DYS conducts the revocation hearing in the facility where the youth is being held.⁴² A Hearing Officer appointed by DYS evaluates and acts upon DYS's request to revoke the grant.⁴³

A youth has a right to bring a lawyer that he or his family has retained to the revocation hearing.⁴⁴ Each indigent youth is offered a lawyer to represent him for free at a revocation hearing. The lawyers that represent youths at these hearings are overseen by the Youth Advocacy Department (YAD) of the Committee for Public Counsel Services. The YAD Revocation Advocacy Coordinator can be reached at (617) 989-8128.

 **Tip for families:** If your child will be having a revocation hearing, is indigent, and does not have a lawyer, contact the Youth Advocacy Department Revocation Advocacy Coordinator at (617) 989-8128. If there is a date set for the hearing, let the Coordinator know that date.

 **Tip for families:** If your child is indigent and does not have a lawyer, your child should ask for one both before the hearing (in writing) and at the hearing itself (to the Hearing Officer). The fact that your child sought counsel becomes part of the record of the proceeding. Asking also lets the Hearing Officer know that your child is serious about participating at the hearing.

A parent or legal guardian may attend the hearing. A parent or legal guardian may help the youth present his case if, for some reason, no lawyer is available to represent the youth.⁴⁵ The youth may speak for himself. A youth also may invite any individual who can give relevant information to the Hearing Officer.⁴⁶ Further, a youth may challenge evidence presented against him.


⁴² DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

⁴³ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

⁴⁴ 109 CMR 8.09(e); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

⁴⁵ DYS, Revocation Manual (June 30, 2003), at 16.

⁴⁶ 109 CMR 8.09(f).

 **Tip for families:** You definitely should attend to support and assist your child.

Your child has a right to have an interpreter at the hearing, if needed.⁴⁷ Or, family members may interpret for the youth at the hearing, with the youth's approval.⁴⁸

At the hearing, the DYS caseworker has the burden of persuading the Hearing Officer (by a preponderance of the evidence) that the violations occurred.⁴⁹ At the hearing, the caseworker presents on behalf of DYS the evidence of the violation(s) and submits supporting documentation to the Hearing Officer.⁵⁰ The caseworker must provide a copy of the supporting documentation to the youth.⁵¹

The youth then may respond and rebut the evidence presented.⁵² The youth may confront and cross-examine witnesses, examine and dispute evidence presented by DYS, call his own witnesses, produce his own evidence, and make an opening and closing statement.⁵³

If an individual who has given evidence against the youth is not at the hearing, the youth may ask the Hearing Officer at the beginning of the hearing to require individual to appear at the hearing so that the youth can question the individual.⁵⁴

The youth may contest the violation. He also may put the violation into context and perhaps convince DYS not to pursue revocation. He may suggest alternatives to lock up, such as pursuing a change in school placement with his school district, a change in medication, or the introduction of counseling. A youth who suffers from a disability also could argue, if appropriate, that the alleged violation was due to the disability and that DYS should make an accommodation and not pursue the revocation in this instance.

If individuals who want to support the youth are unable to attend the hearing, they may submit written statements to the DYS caseworker who will present them to the Hearing Officer at the time of the hearing.⁵⁵

47 DYS, Revocation Manual (June 30, 2003), at 32, 43.

48 DYS, Revocation Manual (June 30, 2003), at 32.

49 109 CMR 8.10(6).

50 Case Management Practice and Procedure Manual (June 14, 2010), at 57.

51 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

52 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

53 109 CMR 8.09; DYS, Revocation Manual (June 30, 2003), at 38-39.


54 DYS form listing procedural rights enjoyed at revocation hearings (undated).

55 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

Findings of the Hearing Officer

At the end of the hearing, the Hearing Officer may announce a decision orally and ordinarily should make written findings within three business days.⁵⁶ If necessary, the Hearing Officer may take a case under advisement, and thereby delay making a decision for a reasonable length of time.⁵⁷ If the Hearing Officer takes the case under advisement, he or she must review the case within 21 calendar days.⁵⁸

The Hearing Officer's decision must be in writing.⁵⁹ The Hearing Officer must submit the decision along with the evidence presented at the hearing to the Director of Community Operations in the DYS Central Office.⁶⁰

 **Tip for families:** A parent or legal guardian who does not attend the hearing still has a right to request and receive a copy of the findings.

The Hearing Officer may find that there is not sufficient evidence to prove that the alleged violation(s) of the grant of conditional liberty occurred.⁶¹ In such a case, the youth must be released with a new grant of conditional liberty.⁶² Release must occur within 24 hours.⁶³ To hold the youth longer, DYS must apply for a Commissioner's Privilege, discussed below, before the 24 hours expire.⁶⁴

Alternatively, the Hearing Officer may find that a preponderance of the evidence shows a violation of the grant of conditional liberty.⁶⁵ In that case, the Hearing Officer must determine the appropriate sanction.⁶⁶ The Hearing Officer must consider the prior revocation history, the caseworker's recommendation, the statements of the youth, family and/or counsel, and the seriousness of the violation.⁶⁷

The Hearing Officer's decision may order any of the following

⁵⁶ 109 CMR 8.10(7); DYS, Revocation Manual (June 30, 2003), at 42; Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Apr. 16, 2010).

⁵⁷ 109 CMR 8.10(8).

⁵⁸ DYS, Revocation Manual (June 30, 2003), at 41.

⁵⁹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁶⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁶¹ 109 CMR 8.10(7); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁶² 109 CMR 8.10(7); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁶³ DYS, Revocation Manual (June 30, 2003), at 42.

⁶⁴ DYS, Revocation Manual (June 30, 2003), at 42.

⁶⁵ 109 CMR 8.10(7); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 57.

⁶⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁶⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

outcomes:

- The Hearing Officer may defer taking action and await court action. This could occur when the youth has been re-arrested.⁶⁸ In these cases, the Hearing Officer must review the case every 21 calendar days.⁶⁹
- The Hearing Officer may revoke and modify the previous grant of conditional liberty.⁷⁰ The Hearing Officer does this in conjunction with the caseworker so that availability of resources can be considered.⁷¹
- The Hearing Officer return the youth to DYS secure treatment for a period of 1-7, 15-30, or 90-120 days.⁷²
- The Hearing Officer may send the case to the Regional Review Team to consider confinement of up to a six month time recommendation in a secure facility.⁷³ All cases sent to the Regional Review Team must be reviewed by that team within 21 calendar days of the revocation hearing.⁷⁴
- The Hearing Officer may consider other reasonable alternatives that are in the revoked youth's best interest.⁷⁵

Finally, the Hearing Officer always should credit the youth with time served in detention while awaiting the hearing.⁷⁶ This practice is especially appropriate if the youth's hearing was postponed or delayed without the youth having requested or being at fault for the postponement or delay.⁷⁷ The Hearing Officer will not allow lengthy delays for those cases "Awaiting Court Action."⁷⁸

After the decision is issued, the DYS caseworker should inform the DYS clinician, who should meet with the youth within 24 hours.⁷⁹ The purpose of this meeting is to explain the decision to the youth and discuss

68 DYS, Revocation Manual (June 30, 2003), at 9.

69 DYS, Revocation Manual (June 30, 2003), at 41.

70 DYS, Revocation Manual (June 30, 2003), at 9.

71 109 CMR 8.10(4).

72 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58; DYS, Revocation Manual (June 30, 2003), at 9.

73 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

74 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58; DYS, Revocation Manual (June 30, 2003), at 41.

75 109 CMR 8.11(1)(d).

76 DYS, Revocation Manual (June 30, 2003), at 41; Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Apr. 16, 2010).

77 DYS, Revocation Manual (June 30, 2003), at 41.

78 DYS, Revocation Manual (June 30, 2003), at 41; Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Apr. 16, 2010).

79 DYS, Revocation Manual (June 30, 2003), at 44-45.


any dissatisfaction on the youth's part with the outcome.⁸⁰

Appeal of decision of the Hearing Officer

A youth (or a caseworker) has the right to appeal the Hearing Officer's decision to the DYS Deputy Commissioner.⁸¹ At the conclusion of the revocation hearing at which a violation(s) is found, the Hearing Officer must inform the youth of the right to appeal the decision within seven days of receiving the Hearing Officer's written decision.⁸²

The caseworker may assist the youth in filling out the appropriate form for an appeal and make sure the form is submitted to the Director of Community Operations in the DYS Central Office within the time frame.⁸³ The youth, family or counsel also may write the appeal.⁸⁴

The DYS Revocation Manual lays out what DYS considers the only appropriate grounds for appeal: the decision was beyond the authority of the Hearing Officer; the decision was based upon an error of law; the decision was based upon unlawful procedure; the decision was unsupported by the weight of the evidence; or the decision was arbitrary or capricious.⁸⁵

 **Tip for families:** If your child is appealing the decision, try to frame your appeal as being based upon one of the above reasons. If you believe that your child has a valid basis for appeal that does not fit within one of the above bases, file your child's appeal in a timely manner and seek legal assistance. Counsel is not required to write or argue an appeal. DYS will accept a handwritten appeal in your child's own language.

The DYS Deputy Commissioner or designee must decide all revocation appeals in writing within fourteen calendar days of receiving the appeal, and provide a copy of the appeal decision to the youth and the caseworker.⁸⁶

⁸⁰ DYS, Revocation Manual (June 30, 2003), at 44.

⁸¹ 109 CMR 8.12(1); DYS, Revocation Manual (June 30, 2003), at 46 (Deputy Commissioner or designee).

⁸² DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58. DYS regulation states that all appeals must be submitted within three days of the youth's receiving the Hearing Officer's decision, 109 CMR 8.12(1). DYS follows the Case Management Manual time frame.


⁸³ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁸⁴ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

⁸⁵ DYS, Revocation Manual (June 30, 2003), at 46.

⁸⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58; DYS, Revocation Manual (June 30, 2003), at 47; Correspondence from Crispin Birnbaum, Department of Youth Services to MHLAC (Apr. 16, 2010) (decision within 14 days of receiving the appeal). DYS regulation states that DYS must decide all appeals within five business days, 109 CMR 8.12(2).

There is no hearing on an appeal.⁸⁷ The decision on appeal is final, and no further appeal is possible because DYS is exempt from Massachusetts General Laws, chapter 30A appeals to the Superior Court.⁸⁸


 **Tip for families:** Since there is no hearing on appeal, you and your child should provide DYS, in addition to the appeal form, any documentation to support the appeal. Provide this information as early as possible, preferably at the time of submission of the form.

Commissioner's Privilege

In addition to the process described above, the DYS Commissioner, for emergency or unusual reasons, may order a youth to continue to be held in custody. Non-secure facilities may be used for youths who are found to be homeless if released, for example.⁸⁹ This practice is called "Commissioner's Privilege."⁹⁰

In such a case, the DYS caseworker seeking to hold the youth beyond the time ordered by the Hearing Officer applies to the Commissioner or the Commissioner's designee, before the time is up, for a Commissioner's Privilege. The Commissioner or designee may decide to hold the youth for a definite period of time or may refer the issue to the Regional Review Team (to hear the matter within 14 calendar days of the application). This decision would be based on information presented on a form completed by the field staff and on information gained in consultation with field staff and, in some cases, the Regional Review Team.⁹¹

Youths have no right to take appeals from the Commissioner's Privilege, but DYS will entertain an appeal similar to the revocation process.⁹²

 **Tip for families:** If you and your child want to contest the decision to hold your child pursuant to a Commissioner's Privilege, ask DYS to provide you with copies of all the documentation presented in support of the request for the retention.

87 109 CMR 8.12(1), (2).

88 109 CMR 8.12(3); Gen. L. ch. 30A, § 1B.

89 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

90 109 CMR 8.14.

91 Correspondence from Department of Youth Services to MHLAC (January 14, 2008).

92 Correspondence from Department of Youth Services to MHLAC (January 14, 2008).

Confinement after a revocation hearing

After the revocation hearing, when a youth is ordered confined to DYS for the period of the revocation sanction, the actual length of stay may vary. For example, if a youth is ordered confined for 90 to 120 days, depending on his behavior, a youth may not remain in custody for the entire time.⁹³ It also is possible that the youth might first be evaluated within the shorter 90-day period, with the understanding that if he does not behave appropriately or make progress on his treatment goals during that period, the time would be reviewed within the longer 120-day period. (If the youth does not behave appropriately during the subsequent interval, DYS can pursue, before the Regional Review Team, a further extension of time assignment.)

A youth typically is held in a revocation unit until the hearing on the revocation.⁹⁴ Once a sanction is determined, he likely will go to a secure treatment unit for the longer durations or stay where he is on the revocation unit if the mandated period of confinement is shorter.⁹⁵

The DYS caseworker and the District Manager will recommend a placement.⁹⁶ A new staffing will be held if there is a change in placement.⁹⁷

For all youths returned to DYS custody, DYS performs a routine intake. Clinical staff will complete a screen for behavioral health disorders, known as the Global Appraisal of Individual Needs – Short Screener (GAIN-SS).⁹⁸ If substance abuse treatment needs are identified or modified, the DYS Caseworker will revise the service delivery plan for substance abuse services to determine if substance abuse was a factor or reason for the revocation.⁹⁹

93 Correspondence from Barbara Kaban, Center for Law and Education, to MHLAC (May 2007);

Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

94 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

95 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

96 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

97 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

98 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), F.5; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

99 DYS Policy # 2.3.6(a), Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), F.5; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 58.

CHAPTER 18:

HEALTH INSURANCE AND OTHER HEALTH CARE FUNDING SOURCES IN THE COMMUNITY

Public health insurance programs	18.2
Through age 18	18.2
<i>MassHealth generally</i>	<i>18.2</i>
<i>Choosing a health plan once a youth is enrolled in MassHealth</i>	<i>18.3</i>
<i>Youths returning to the community</i>	<i>18.3</i>
After age 18	18.6
Private health insurance programs	18.6
Commonwealth Health Insurance Connector Authority	18.8
Accessing free care	18.9

HEALTH INSURANCE AND OTHER HEALTH CARE FUNDING SOURCES IN THE COMMUNITY

When DYS involved youths are released to the community, many of their mental health providers will change. As these services are important for youths trying to succeed in the community, it is important to maintain continuity of care. To do so, it is important to pursue all health insurance possibilities. This chapter addresses the sources of health care funding for youths under DYS supervision in the community.

For additional information on ways you can access health care and mental health care, see <http://www.masslegalhelp.org>. Once on the web site, go to the page on health and mental health. The mental health section describes how to get public and private insurers to pay for mental health services.

Public health insurance programs

Through age 18

MassHealth generally

The primary public health insurance program for Massachusetts children is the Medicaid (MassHealth) program.¹ MassHealth also covers certain adults. For more information on MassHealth, see <http://www.mass.gov/masshealth/>.


Massachusetts also has a program that provides limited primary care called the Children’s Medical Security Plan (CMSP).² Coverage for children ends at age 19.

MassHealth covers children through age 18 who meet financial qualifications and are either a U.S. Citizen, “lawful permanent resident,” or “person residing in the U.S. under color of law.” MassHealth is administered by the state Office of Medicaid. MassHealth includes different types of coverage for different populations. Lower income children and disabled children are enrolled in MassHealth Standard or

¹ 42 U.S.C. § 1396 *et seq.*, Title XIX of the Social Security Act; 42 CFR §§ 430–45; Mass. Gen. L. ch. 118E; 130 CMR §§ 401–42, 456, 484–85 (covered services), § 450 (administrative and billing), §§ 501–08 (health reform), §§ 515–21 (traditional Medicaid), § 522 (other programs), § 610 (fair hearings), and § 650 (insurance partnership).

² Mass. Gen. L. ch. 118E, § 10F; 130 CMR 522.004.

CommonHealth.³ Children with somewhat higher incomes and certain non-citizen children are enrolled in MassHealth Family Assistance, a program with fewer benefits than MassHealth Standard or CommonHealth.

 **Tip for families:** If you think your child should be eligible for MassHealth, call the MassHealth Enrollment Center at (888) 665-9993.

Choosing a health plan once a youth is enrolled in MassHealth

Currently, MassHealth Standard and MassHealth Family Assistance (direct coverage) recipients with no other private insurance must choose an insurance plan to administer their MassHealth behavioral health benefits. They may choose either a managed care organization (MCO) or care managed by a primary care clinician (PCC). If one chooses a PCC, the behavioral health services are provided on a fee-for-service basis and managed by a private company called the Massachusetts Behavioral Health Partnership (“Partnership”).⁴ This arrangement is called a “carve out.”

Youths enrolled in MassHealth Standard who also have private insurance are not able to participate in managed care.⁵ Therefore, these youths receive fee-for-service coverage offered through the Partnership for behavioral health services that are not covered by the youth’s primary health insurance plan.⁶ Similarly, youths enrolled in CommonHealth primarily receive services on a fee-for-service basis.⁷ They too may access behavioral health services through the Partnership.

Youths returning to the community

As explained in the section entitled “Health care coverage from health insurance programs” in Chapter 12, Medical Services During Confinement, detained and committed youths are found presumptively eligible for MassHealth and enrolled in MassHealth Standard.

3 CommonHealth, also offered by MassHealth, a health plan for Massachusetts residents with disabilities who cannot get MassHealth Standard.

4 130 CMR 508.001(A).

5 130 CMR 508.004.

6 DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children’s Behavioral Health Initiative (Sept. 1, 2009), http://www.rosied.org/resources/Documents/DPH%20Protocols_final.doc, at 13.

7 Vicky Pulos, “Part 16: Service Delivery”, in MassHealth Advocacy Guide (2009/2010), <http://www.masslegalservices.org/system/files/MassHealth2009.Pts16and17.pdf>, at 184.

A youth returning to the community from DYS detention loses the MassHealth coverage he enjoyed while in DYS. Prior to a detained youth's return to the community, DYS will work with the youth to determine whether the youth is eligible to continue receiving some form of MassHealth or whether the youth should restore coverage by his family's health plan.⁸ For more information on these options, see the section on Public Health Insurance Programs in Chapter 18, Health Insurance and Other Health Care Funding Sources in the Community.

By contrast, a committed youth continues to have presumptive MassHealth eligibility when he returns to the community so long as he remains committed to DYS. This presumptive eligibility continues even if the youth would not be otherwise eligible for MassHealth due to immigrant status or family income over the eligibility limit for MassHealth Standard.

Prior to a youth's discharge from DYS commitment, DYS will work with the youth to determine whether the youth should seek to maintain MassHealth eligibility or whether the youth should replace that MassHealth coverage with coverage under his family's health plan.⁹

Because the presumptive eligibility for MassHealth that DYS involved youths obtain is limited to the time they spend in detention or commitment, to extend it beyond that time, a youth seeking to maintain MassHealth eligibility must provide MassHealth with certain proof to document eligibility. Such proof is necessary to convert initial eligibility into full eligibility. If the youth is not eligible for MassHealth Standard, DYS will investigate if there are other forms of public insurance coverage for which the youth would be eligible. These types of coverage are discussed later in this section.

A youth discharged from DYS control who is found eligible for MassHealth services and who participates in managed care has the same options for behavioral health services as does a DYS involved youth confined by DYS. A community-based youth may receive behavioral health services through the Partnership by choosing the PCC option.¹⁰ Alternatively, the youth could choose one of the four managed care organizations (MCOs) instead of the PCC option.¹¹ And, as stated above, families that also have private insurance covering their children will not be able to participate in the MCO managed care plans.¹²


8 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.

9 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.


10 130 CMR 508.001(A).

11 130 CMR 508.001(A).

12 130 CMR 508.004.


 **Tip for families:** A youth receiving Partnership services is eligible for one of four levels of administrative case management services provided by the Partnership. These Partnership case management services are independent of DYS and the services are different than the case management services performed by a DYS caseworker. The Partnership has criteria to determine whether a youth qualifies for these Partnership services. From least intensive to most intensive, these services include: targeted outreach, care coordination, intensive case management, and essential care medical management (for members who have not only psychiatric or behavioral issues, but also have serious medical conditions). Descriptions of these services are available on the Mass. Behavioral Health Partnership web site, <http://www.masspartnership.com/member/> (select Services for Members on left bar, then select Specialized Care Management Services). Typically, these services are provided in the community (although they also may be available to individuals in confinement). For example, intensive case management through the Partnership usually is provided as a patient is approaching discharge from a psychiatric hospital and there is a need for intensive follow up. If you want Partnership case management for your child, contact Partnership staff.

Families of children with disabilities whose incomes are too high for MassHealth Standard can pursue Commonwealth. There is no upper income limit for youths with disabilities in the Commonwealth program. Families receive Commonwealth by paying a monthly premium based on income. To be eligible, a youth must be under age 19 and meet Supplemental Security Income's (SSI) disability standard for minors.

 **Tip for families:** If you think your child should be eligible for Commonwealth, call the MassHealth Enrollment Center at (888) 665-9993.


For some youths, the Children's Medical Security Plan (CMSP) may be an appropriate option. CMSP is a state-run health insurance program providing primary and preventive care to children under age 19. Unlike MassHealth, the CMSP is open to uninsured children at any income level, including undocumented immigrants. Children in moderate and higher income families are charged a monthly premium. The CMSP provides only primary and preventive care, not hospitalization, and currently pharmacy

services are capped at \$200 per year, and mental health visits are limited to 20 per year.

 **Tip for families:** If you think your child should be eligible for the CMSP, call the MassHealth Enrollment Center at (888) 665-9993.

After age 18


MassHealth is available to certain categories of adults age 18 and older who also meet financial eligibility rules and rules related to citizenship and immigration status, including: pregnant women; parents (which can include DYS involved youths) living with their children under age 19; individuals who are disabled and meet SSI's disability standard for adults; individuals who have been unemployed for at least 12 months; HIV positive individuals; and youths who were in the care and custody of the Department of Children and Families (DCF) on their 18th birthday (until age 21).

 **Tip for families:** If you think your child should be eligible for MassHealth as an adult, call the MassHealth Enrollment Center at (888) 665-9993.


For more information about services available to Medicaid eligible youths, see the section entitled “Accessing *Rosie D.* services” in Chapter 19, Mental Health and Substance Abuse Services in the Community.

Private health insurance programs

If a youth is enrolled in a private health insurance program, it is important for families to make sure that that coverage is available to the youth upon release from DYS custody to the community under DYS supervision as that coverage will allow the youth to access health care in the community.

 **Tip for families:** If your child has access to private health insurance, make sure that your child is enrolled when he leaves DYS custody for a community placement (but is still under DYS supervision). Consult your policy for the provisions regarding coverage for dependents. Pay attention to open enrollment dates so your child is not left without coverage.

Some private health insurance companies “carve out” the mental health care coverage from other types of health care coverage and arrange for such coverage to be managed by a separate company. If your insurance company does this, make sure you have a description of the mental health care coverage provided by the company providing mental health coverage.


 **Tip for families:** Like the Massachusetts Behavioral Health Partnership (see the section above on Public Health Insurance Programs), private insurance companies may also offer their own intensive case management to youths. (These case management services are independent of your child’s DYS involvement and the services are completely different from the case management services performed by a DYS caseworker.) A parent who is interested in receiving such services should contact the insurance company.

Health plans may be subject to the Massachusetts mental health parity law. Such health plans may not have annual or lifetime limits, in dollars or number of visits, for the diagnosis and treatment of certain mental disorders, which are lower than the limits on coverage for diagnosis and treatment of physical conditions.¹³

Insurers subject to the Massachusetts mental health parity law must provide full parity in coverage for mental disorders that are “biologically-based,” specifically: schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, paranoia and other psychotic disorders, obsessive-compulsive disorder, panic disorder, delirium and dementia, affective disorders, eating disorders, post traumatic stress disorders, substance abuse disorders and autism. In addition to full parity coverage of designated biologically-based disorders, insurers cover medically necessary treatment of other mental disorders for a minimum of 60 days inpatient care and 24 outpatient visits per year. Children under

¹³ Mass. Gen. L. ch. 32A, § 22; ch. 175, § 157, § 47B; ch. 176A, § 8A; ch. 176 B, § 4A, ch. 176G, § 4M (originally enacted by Chapter 80 of the Acts of 2000 and amended, most recently, by Chapter 256 of the Acts of 2008). Chapter 256 of the Acts of 2008 took effect on July 1, 2009.

age 19 get even broader coverage. For children, the plan must provide parity coverage for the diagnosis and treatment of non-biologically based mental, behavioral or emotional disorder which “substantially interfere with or substantially limit the functioning and social interactions of such a child.” Insurance coverage obtained through “self-funded” plans (often offered by a large employer) are not subject to the Massachusetts parity law but will be covered by a new federal mental health parity law which took effect July 1, 2009 but, in most cases, will not apply to plan years until 2010.¹⁴

 **Tip for families:** Assistance with appeals of insurance company denials is available without charge from the Mental Health Legal Advisors Committee, <http://www.mhlac.org>, (617) 338-2345 ext. 129. In addition, if internal appeals available through a private insurance company are not successful, families can appeal denials of coverage to the Massachusetts Department of Public Health’s Office of Patient Protection, <http://www.mass.gov/dph/opp>, (800) 436-7757.

Commonwealth Health Insurance Connector Authority

The Commonwealth Health Insurance Connector Authority (“the Connector”) is a public agency that helps qualified Massachusetts adult residents purchase health care coverage. More information about the Connector can be found at <http://www.mahealthconnector.org>. The Connector was created to implement a 2006 law which requires that uninsured adults in Massachusetts buy health insurance.¹⁵ The Connector administers two programs: Commonwealth Care and Commonwealth Choice.

- Commonwealth Care offers subsidized health insurance to low income residents of Massachusetts who do not qualify for other public health insurance programs. Commonwealth Care provides a choice of private health insurance plans. Such a plan may be available for an adult child if he or she cannot work on a regular basis, but does not qualify as disabled.¹⁶ For more information on Commonwealth Care, contact (877) MA-ENROLL or <http://www.mahealthconnector.org>.

¹⁴ Mass. Gen. L. ch. 32A, § 22; ch. 175, § 157, § 47B; ch. 176A, § 8A; ch. 176 B, § 4A, ch. 176G, § 4M (originally enacted by Chapter 80 of the Acts of 2000 and amended, most recently, by Chapter 256 of the Acts of 2008). Chapter 256 of the Acts of 2008 took effect on July 1, 2009.


¹⁵ Mass. Gen. L. ch. 118G, § 18(d), (i); 114.6 CMR § 12.00 *et seq.*


¹⁶ Chapter 58 of the Acts of 2006, An Act Providing Access to Affordable Quality, Accountable Health Care.

- Commonwealth Choice will provide commercial health insurance plans to uninsured individuals and small businesses. One plan will be for people ages 19-26.¹⁷

Accessing free care

If a youth is ineligible for the above types of health insurance (or sometimes even if he is work eligible), he may have to rely on the “Uncompensated Care Pool” (also called “Free Care”).¹⁸ The program reimburses hospitals and community health centers for providing free or partially free care to uninsured or underinsured patients who live in Massachusetts and meet financial eligibility rules. Citizenship or immigration status does not affect eligibility for the free care pool.

 **Tip for families:** If you think your child should be eligible for the Uncompensated Care Pool, call the MassHealth Enrollment Center at (888) 665-9993.

 **Tip for families:** Do not fail to pursue community-based mental health services for your child because of payment concerns. Instead, talk to the mental health service providers about coverage options. A community health center is a good source of information and services.

¹⁷ Boston Bar Association, The Parents' How-to Guide to Children's Mental Health Services in Massachusetts, Chapter 7, at 10 (2007).

¹⁸ Boston Bar Association, The Parents' How-to Guide to Children's Mental Health Services in Massachusetts, Chapter 7, at 10 (2007).

CHAPTER 19:

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES IN THE COMMUNITY

Accessing mental health services	19.2
Accessing emergency services and crisis evaluation	19.3
Accessing <i>Rosie D.</i> services.....	19.3
Accessing services from the Department of Mental Health.....	19.7
Clinical eligibility	19.8
<i>Adult applicants</i>	19.8
<i>Child and adolescent applicants</i>	19.8
Determination of need for Department of Mental Health services	19.9
Available services.....	19.10
Juvenile Forensic Transition Initiative	19.10
Accessing substance abuse services.....	19.11
DYS services	19.11
Bureau of Substance Abuse Services	19.12
Substance abuse testing	19.14

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES IN THE COMMUNITY


This chapter should be read in conjunction with the earlier chapters, “Mental Health and Substance Abuse Services During Confinement” and “Health Insurance and Other Health Care Funding Sources in the Community.”

Accessing mental health services

Mental health services in the community are available in many different settings including community health centers, schools, faith-based programs, state agencies, hospitals, private offices and your home.

There are a range of types of services available. These include:

- office-based outpatient services such as individual therapy and/or family therapy, medication management, and substance abuse treatment;
- intensive non-residential outpatient services such as community services, family stabilization services, observation/partial hospitalization, psychiatric day treatment, and substance abuse treatment;
- emergency services such as crisis intervention and screening, short-term crisis counseling, emergency medication management, and crisis stabilization;
- inpatient services such as hospitalization, short-term residential treatment, and longer-term residential treatment.

 **Tip for families:** To find services that are appropriate for your child, you might consult with, in addition to DYS, your mental health care insurance provider, your child’s pediatrician or other health care providers, your local Community Service Agency, your friends, your family, your religious advisor, your child’s school staff, and mental health care advocates, among others.


Most mental health services in the community are paid for by Medicaid or private insurance. Insurance coverage is discussed further in the chapter entitled “Health Insurance and Other Health Care Funding Sources in the Community.”

Accessing emergency services and crisis evaluation

Youths may access emergency services during psychiatric crisis in several ways. As has been traditional in the past, a youth may go to an emergency room or call 911. Going to an emergency room is always appropriate if a youth has overdosed, injured himself, is intoxicated, or is experiencing the first onset of serious psychiatric symptoms.¹

Recently, another source of emergency services has been created for certain categories of youths: Emergency Service Providers (ESPs). ESPs are available to MassHealth clients, Department of Mental Health clients and people without insurance. ESPs provide assessment, crisis intervention, mobile capacity, and referral services. All ESPs must have 24-hour mobile capacity for minors.²

ESP is available for youths living in the community, including youths residing in DYS staff secure treatment facilities.³ ESP is not available to youths residing in DYS hardware secure treatment facilities as these youths are not eligible for MassHealth until they leave the facility.⁴

 **Tip for families:** Each community has its own ESP provider. You can find your community's provider at <http://www.masspartnership.com/provider/index.aspx?lnkID=ESPArchiveMain.ascx>.

Accessing *Rosie D.* services

Rosie D. is a class action federal court lawsuit that sought to compel the Commonwealth of Massachusetts to provide intensive home-based mental health services to individuals under age 21 with serious emotional disturbance, pursuant to the federal Medicaid Act. Under the Act's Early Prevention, Screening, Diagnosis and Treatment (EPSDT) mandate, all states must screen eligible children, diagnose conditions found, and furnish appropriate treatment to correct or ameliorate physical and mental health issues (promptly and for as long as is needed).

1 Center for Public Representation, Fact Sheet: Emergency Service Providers (ESPs).

2 Emergency Service Program (ESP) Overview at 12, <http://www.masspartnership.com> (click on "ESP" and then on "ESP Overview") (visited Nov. 9, 2009).

3 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

4 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 5.

The outcome of the suit, by order issued in 2006, was that Massachusetts had to comply with this mandate. Pursuant to that order, Massachusetts will provide home-based mental health services to youths who meet the following criteria:

- under age 21;
- reside in Massachusetts;
- eligible for MassHealth;
- diagnosed with a serious emotional, behavioral or psychiatric condition meeting the federal definitions of serious emotional disturbance (SED); and
- are determined through a mental health evaluation to need home-based services.

A remedial plan, issued by the federal court in February 2007, sought to restructure the children’s mental health system by incorporating intensive, home-based services, including behavioral health screenings, assessments, case management, crisis intervention, and in-home therapy supports.

The services available to youths depend on the type of MassHealth in which the youth is enrolled. Youths who are enrolled in MassHealth Standard or CommonHealth can access all *Rosie D.* services. Youths enrolled in MassHealth Family Assistance (direct coverage) can access In-Home Therapy and Mobile Crisis Intervention. As youths detained and committed to DYS are enrolled in MassHealth Standard, they should benefit from this new service system, should they experience behavioral health problems.

Individuals enrolled in MassHealth Standard can select an insurance plan to administer the behavioral health benefits. There are two types of plans: Primary Care Clinician (PCC) or a Managed Care Organization (MCO).

The PCC plan for MassHealth carves out behavioral health services to a separate entity known as the Massachusetts Behavioral Health Partnership (“Partnership” or “MBHP”). So, for individuals enrolled in the PCC plan, the Partnership manages the delivery of behavioral health services.

With respect to the MCOs – Fallon Community Health Plan, BMC HealthNet, Neighborhood Health Plan, Network Health, and Health New England – some provide behavioral health services from within their own network while others subcontract to another provider which has its own network of mental health providers. BMC HealthNet and Network Health Plan provide mental health services directly to MassHealth recipients. Neighborhood Health Plan and Fallon Community Health Plan subcontract with Beacon Health Strategies and Health New England subcontracts with MBHP. (See the section entitled “Health care coverage from health insurance programs” in Chapter 12, Medical Services During Confinement for more information on these MassHealth options.)

Depending on the insurance plan selected, different entities administer the behavioral health benefits. However, for all individuals, regardless of the insurance plan chosen, the available services and the ability to access them should be the same. In all cases, these are home and community-based services. They are delivered in a variety of settings – home (including foster homes), school, community. The services can be provided separately or in combination.

The new MassHealth home and community based services, including the screening and assessment services, are:

- Behavioral Health Screening;
- Comprehensive Diagnostic Assessments;
- Mobile Crisis Intervention;
- Crisis Stabilization Units;⁵
- In-Home Therapy;
- Intensive Care Coordination;
- Family Support and Training provided by Family Partners;
- In-Home Behavioral Services; and
- Therapeutic Mentoring.

To be eligible for a particular service, a youth must meet the service’s specific medical necessity criteria. More information about these services, including the service definitions, the medical necessity criteria, and lists of providers and contact information for these services, is available at <http://www.masspartnership.com/provider/index.aspx?InkID=CBHI.ascx>.

Some DYS involved youths who are returning to the community may benefit from Intensive Care Coordination. If this service may be appropriate, the DYS caseworker and DYS clinician will help the family identify the Community Service Agency (CSA) in the geographic area to

⁵ The federal Centers for Medicare and Medicaid Services (CMS) have not yet approved Massachusetts’ proposal for Crisis Stabilization Units and this service is, therefore, not yet available. It is unclear if CMS will or will not approve this service at some future time.

which the child is returning, and also inform the family of any specialized CSA serving their region.⁶ Lists of the geographic and specialty CSAs are available at Alert 64 at <http://www.masspartnership.com/provider/index.aspx?InkID=CBHI.ascx>.

For more information about ensuring continuing of care regarding MassHealth services during the period of transition from confinement to community, see the section entitled “Continuity of Care” in Chapter 16, Transition Back to the Community.

A family may request Family Support and Training (through a Family Partner) in conjunction with the referral.⁷ The family may make this request to the provider independently, or the DYS caseworker or district manager may assist the family by facilitating a phone call or meeting with the treatment provider.⁸

For referrals to In-Home Therapy and all other MassHealth behavioral health services, the DYS caseworker and DYS clinician will help the family identify providers in their community.⁹

The DYS caseworker is responsible for identifying and addressing the evolving needs of a youth living in the community under a grant of conditional liberty.¹⁰ These needs and related services are added to the DYS service delivery plan as the needs emerge, and are reviewed and revised every six months.¹¹ For DYS youths in community placement, the DYS caseworker will identify, address, and document each youth’s behavioral health needs in the youth’s service delivery plan and relapse prevention plan (RPP).¹² The DYS caseworker then will facilitate access to the services identified in the plan.¹³

If the behavioral health needs of a youth change while the youth is living in the community, the DYS caseworker will:

- Consult with the DYS Community Clinical Coordinator and with any behavioral health provider(s) treating the youth, and devise

6 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

7 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

8 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

9 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

10 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.


11 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.


12 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

13 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

an appropriate intervention plan.¹⁴ This process may include a meeting to review and revise the service delivery and relapse prevention plans and make referrals to additional behavioral health services and supports, as needed.¹⁵

- If the youth is not currently receiving behavioral health services, refer the youth to a MassHealth behavioral health provider for a behavioral health assessment and appropriate services intervention.¹⁶
- Document changes in the youth’s behavioral health needs and related services in the youth’s service delivery plan and RPP.¹⁷

 **Tip for families:** To learn more about how to access MassHealth behavioral services, you can contact your child’s insurance plan.

 **Tip for families:** More information about *Rosie D.* is available at <http://www.rosied.org/>, <http://www.mass.gov/masshealth/childbehavioralhealth>, and <http://www.masspartnership.com/provider/index.aspx?InkID=CBHI.ascx>.

Accessing services from the Department of Mental Health

The Massachusetts Department of Mental Health (DMH) provides continuing care services to adults with serious mental illness and youths with serious emotional disturbance. To receive continuing care services from DMH, an individual must meet DMH eligibility standards. As indicated above, the clinical eligibility standards differ for children and adolescents (youths under age 19 at the time of application) and adults (age 19 and older).¹⁸ Even after an individual has been found clinically eligible, access to services also will depend on a determination of need for DMH services.¹⁹

14 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

15 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

16 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

17 DYS and EOHHS, DYS Strategic Direction on Children’s Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 6.

18 104 CMR 29.04(2).

19 104 CMR 29.04(3).

Clinical eligibility

In order to be clinically eligible for DMH continuing care services, an individual must have a qualifying mental disorder as the primary disorder requiring treatment, and meet functional impairment and illness duration criteria. The eligibility criteria vary depending on the age of the applicant, as follows:

Adult applicants

The adult applicant must have a severe and persistent mental illness that has resulted in functional impairment that substantially interferes with or limits one or more major life activities.²⁰ In addition, the qualifying mental disorder must have lasted for, or be expected to last for, at least one year.²¹

The qualifying mental disorders are:

- schizophrenia and other psychotic disorders (excluding psychotic disorders due to a general medical condition and substance-induced psychotic disorders);
- mood disorders (excluding dysthymia and mood disorders due to a general medical condition);
- anxiety disorders (excluding anxiety disorders due to a general medical condition and substance induced anxiety disorders);
- dissociative disorders;
- eating disorders; and
- borderline personality disorder.²²

Child and adolescent applicants

A child or adolescent applicant must be under age 19 at the time of application.²³ The qualifying mental, behavioral or emotional disorder must substantially interfere with or limit his or her role or functioning in family, school, or community activities.²⁴ In addition, the serious mental disturbance must have lasted for, or be expected to last for, at least one year.²⁵

²⁰ 104 CMR 29.04(2)(a).

²¹ 104 CMR 29.04(2)(a).

²² DMH, Guidelines for Eligibility for Mental Health Services (January 1, 2000), <http://www.mass.gov/dmh>.


²³ 104 CMR 29.04(2)(b).


²⁴ 104 CMR 29.04(2)(b).


²⁵ 104 CMR 29.04(2)(b).

The qualifying mental disorders are:

- schizophrenia and other psychotic disorders (excluding psychotic disorders due to a general medical condition and substance-induced psychotic disorders);
- mood disorders (excluding dysthymia and mood disorders due to a general medical condition);
- anxiety disorder (excluding anxiety disorders due to a general medical condition and substance induced anxiety disorders);
- dissociative disorders;
- eating disorders;
- borderline personality disorder;
- attention-deficit/hyperactivity disorder.²⁶

 **Tip for families:** Individuals age 18 and 19 complete the adult application, but those individuals who are between age 18 and 18³/₄ who are not eligible for adult services will be considered under the child/adolescent eligibility criteria. Individuals between age 18³/₄ and 19 who are not eligible for adult services may receive short-term child/adolescent services. DMH, Guidelines for Eligibility for Mental Health Services (January 1, 2000), <http://www.mass.gov/dmh>.

 **Tip for families:** There is a standard application for DMH eligibility, available from DMH or <http://www.mass.gov/dmh>, which should be submitted to a local DMH office. If your child has a mental health clinician, that person should assist in completing the application.

 **Tip for families:** Even if you are not sure of your child's eligibility, you may want to pursue services. DMH sometimes provides short-term services pending an eligibility determination.

Determination of need for Department of Mental Health services

Once an individual is found clinically eligible, DMH will determine whether the individual has a need for DMH services. The determination of need is based on

²⁶ DMH, Guidelines for Eligibility for Mental Health Services (January 1, 2000), <http://www.mass.gov/dmh>.

- contact with the applicant and legally authorized representative to review youth's request for service and current status;
- whether the individual's needs can be met by a DMH service;
- the individual's current medical entitlements and insurance that allow for provision of appropriate services in the community; and
- the availability of appropriate services from other public or private entities.²⁷

Available services

For children under age 19 who are found eligible, DMH services may include:

- extended-stay inpatient treatment;
- residential treatment;
- day treatment and/or in-home treatment;
- case management and medication management services;
- family support services;
- after-school programs;
- skills training and support services for children and families; and
- clubs and other community-based continuing care services.

Juvenile Forensic Transition Initiative²⁸

For some DYS involved youths, access to DMH services is pursued by DYS in collaboration with a DMH Juvenile Forensic Transition Team (FTT) staff member while the youth is still confined. The Juvenile Forensic Transition Team Initiative is a program in which DYS and DMH collaborate to better serve DYS committed youths with psychiatric challenges that may make them eligible for DMH services as they prepare to reenter the community.

²⁷ 104 CMR 29.04(3).

²⁸ Information in this section is based upon correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Feb. 2007).

Three to six months prior to community re-entry, DYS Clinical Coordinators will identify youths who might meet the criteria for DMH services.²⁹ The DYS Clinical Coordinators will then contact the DMH Juvenile FTT staff member to initiate the DMH eligibility process. FTT staff and DYS will complete a DMH eligibility determination and complete a community re-entry plan prior to the youth's release from secure treatment. If the DYS committed youth is already DMH eligible, the FTT staff member will work with DMH staff in re-entry planning, including making a determination of whether the youth will receive an extension of eligibility past age 19 (based upon the earlier eligibility for Child/Adolescent DMH services), or if an application should be made for DMH adult services eligibility.

In addition to focusing on youths with significant mental illness in DYS secure treatment settings, the Juvenile FTT also consults on the service needs for DYS youths who may be eligible for DMH specific services and are being served in detention, other treatment settings and in the community.³⁰

Accessing substance abuse services

Substance abuse treatment should be available to all DYS involved youths being served in the community who need such services. Services may be provided by DYS or by other providers.

If a youth identified as having a substance abuse problem is released to the community, the re-entry plan should include specific provisions for substance abuse treatment.³¹

DYS services

DYS partners with the Bureau of Substance Abuse Services (BSAS) of the Department of Public Health (discussed further below) to adapt and implement a substance abuse intervention program called CASASTART.³² CASASTART is a community-based program designed to keep high-risk youths free of drug and crime involvement through intensive preventative services and community-based law enforcement activities.³³ CASASTART is currently available in three regions: West (Springfield

29 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

30 Correspondence from Tina Adams, DMH to MHLAC (Sept. 16, 2009).

31 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

32 DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children's Behavioral Health Initiative (Sept. 1, 2009), http://www.rosied.org/resources/Documents/DPH%20Protocols_final.doc, at 3.

33 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 43.


and Holyoke), Metro (South Dorchester and Roxbury), and Northeast (Lawrence and Lynn).³⁴

Bureau of Substance Abuse Services

In addition to the substance abuse services provided by DYS run or contracted programs, the Department of Public Health's Bureau of Substance Abuse Services (BSAS) also coordinates a range of substance abuse services, including outpatient services, stabilization programs for youths in crisis, residential treatment, school-based programs, and mental health services for conditions related to substance abuse. These services are provided in schools, community agencies and health centers, or other community-based locations.

Certain community-based programs may be limited to youths in the program's community. There may be a wait to obtain services.

Most outpatient substance abuse programs available through BSAS provide services regardless of a youth's health insurance coverage. Additionally, BSAS staff can help youths enroll in a comprehensive MassHealth health insurance plan.³⁵

 **Tip for families:** To access adolescent outpatient substance abuse programs services, call the Massachusetts Substance Abuse Information and Education Helpline at (800) 327-5050. You also can read about the available services at the web site of the BSAS's Office of Youth and Young Adult Services at http://www.mass.gov/dph/bsas/treatment/young_adult_services.htm.

Among the services that BSAS sponsors through its Office of Youth and Young Adult Services are:

- **Adolescent Outpatient Substance Abuse Providers --** Approximately 60 community-based outpatient providers are approved to provide adolescent services. Providers would bill insurance, including MassHealth.
- **Adolescent Detoxification/Stabilization Services --** Providers offer youths in crisis medical monitoring to stabilize their physical and emotional states. Once stabilized, the youth receives a comprehensive


³⁴ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.

³⁵ DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children's Behavioral Health Initiative (Sept. 1, 2009), http://www.rosied.org/resources/Documents/DPH%20Protocols_final.doc, at 10.

assessment. These services are for males and females between the ages of 13 and 17.

- **Adolescent Residential Treatment** -- There are currently five gender specific short-term (an average of 90 days) residential treatment programs. There are girls' programs in Worcester and Lawrence and boys' programs in Danvers, Quincy, and Springfield.
- **Adolescent/Young Adult Recovery Home** -- There are two gender specific recovery home model residential programs for substance abusing youths between the ages of 16 and 19. The residential component consists of three phases and may be up to a 6 month program.³⁶

BSAS also offers several Family Services that serve parents and their children.³⁷

 **Tip for families:** It is important to remember that if your child is still under DYS supervision, he will continue to be supervised by his DYS caseworker, even while he resides at one of these residential programs. He also will continue to be subject to the conditions of his grant of conditional liberty.

There is a process to access these residential programs. Youths that exhibit high risk behavior must undergo a full substance abuse assessment by an approved outpatient adolescent services provider.³⁸ If the assessment indicates the need for residential substance abuse treatment, the assessment is forwarded to a central intake coordinator for the state, located at the Institute for Health and Recovery in Cambridge.³⁹ The coordinator reviews referrals and coordinates admission to residential programs. If an alternative program is appropriate, the coordinator will offer suggestions.⁴⁰

The residential programs are voluntary (i.e., youths sign themselves

³⁶ DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children's Behavioral Health Initiative (Sept. 1, 2009), <http://www.rosied.org/resources/Documents/DPH%20Protocols.final.doc>, at 2-3.

³⁷ For descriptions of these services, see DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children's Behavioral Health Initiative (Sept. 1, 2009), <http://www.rosied.org/resources/Documents/DPH%20Protocols.final.doc>, at 3-4.


³⁸ Institute For Health and Recovery, Youth Substance Abuse Treatment Programs: Fact Sheet for State Agencies and the Courts (rev. 03/29/2007); Telephone conversation with Peter Kosciusko, Director of Substance Abuse Services, DYS (Feb. 10, 2011).

³⁹ Institute For Health and Recovery, Youth Substance Abuse Treatment Programs: Fact Sheet for State Agencies and the Courts (rev. 03/29/2007); Telephone conversation with Peter Kosciusko, Director of Substance Abuse Services, DYS (Feb. 10, 2011).

⁴⁰ Institute For Health and Recovery, Youth Substance Abuse Treatment Programs: Fact Sheet for State Agencies and the Courts (rev. 03/29/2007); Telephone conversation with Peter Kosciusko, Director of Substance Abuse Services, DYS (Feb. 10, 2011).

in).⁴¹ The programs function like a group home.⁴² The programs do not use behavior modification or restraints, so youths must be able to maintain self-control in order to be eligible for a slot.⁴³

Families will be asked to share the cost of residential treatment based on a sliding scale.⁴⁴ Family contribution, if any, will be arranged with the program based on individual circumstances.⁴⁵

 **Tip for families:** To locate an approved provider to conduct an assessment of the need for residential services or to learn more about the referral process, contact the Massachusetts Substance Abuse Information and Education Helpline at (800) 327-5050.

Planning for a youth's release from residential programs should start when he arrives at the program. This process includes planning for appropriate mental health services once the youth returns to the community.⁴⁶

Substance abuse testing

Drug testing of DYS youths in the community may be conducted by a youth's substance abuse treatment provider as part of the youth's treatment plan or other medically necessary treatment.⁴⁷ Only outpatient treatment providers or DYS health services staff may administer these tests; all other DYS staff are prohibited from doing so.⁴⁸ Substance abuse test results administered by a sheriff's office, probation department or other non-health provider may not be used as the sole reason for imposing sanctions on a DYS involved youth.⁴⁹ However, if a substance abuse test given by an outside health provider is positive, DYS staff may consider implementing the revocation process.

For further discussion of substance abuse testing of DYS

41 Telephone conversation with Maggie Giles, Director of Youth Services, Central Intake Coordinator, Institute for Health and Recovery (Feb. 20, 2007).

42 Telephone conversation with Maggie Giles, Director of Youth Services, Central Intake Coordinator, Institute for Health and Recovery (Feb. 20, 2007).

43 Telephone conversation with Maggie Giles, Director of Youth Services, Central Intake Coordinator, Institute for Health and Recovery (Feb. 20, 2007).

44 Institute for Health and Recovery, Pre-Admission Checklist (undated).

45 Institute for Health and Recovery, Pre-Admission Checklist (undated).

46 DPH and EOHHS, Strategic Opportunities for the Department of Public Health and the Children's Behavioral Health Initiative (Sept. 1, 2009), http://www.rosied.org/resources/Documents/DPH%20Protocols_final.doc, at 10.

47 DYS Policy # 2.3.6(a) Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.1.

48 DYS Policy # 2.3.6(a) Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.3.

49 DYS Policy # 2.3.6(a) Client Substance Abuse Assessment, Prevention and Treatment (Oct. 1, 2009), Policy, I.2.

committed youths in DYS community programs, see the section entitled “Substance abuse testing” in Chapter 13, Mental Health and Substance Abuse Services During Confinement.


CHAPTER 20:

EDUCATION IN THE COMMUNITY

Types of education a youth may access	20.2
Academic credit transfer	20.3
Public school refusal to enroll a student	20.4
Suspension from public school	20.4
Expulsion from public school	20.6
Protections for students with disabilities from suspension and expulsion	20.9
Transition schools.....	20.12
Special rights for youths receiving special education services	20.15
IEP’s transition plan	20.15
“Stay put” right.....	20.16
Alternative education	20.16

EDUCATION IN THE COMMUNITY


DYS youths face decisions and possible difficulties as they transition back from a DYS residential facility to educational services in the community.

 **Tip for families:** DYS educational liaisons and caseworkers can help make decisions and address such problems when they arise. In addition, families may want to file a complaint with the Program Quality Assurance (PQA) division of the Massachusetts Department of Elementary and Secondary Education (DESE) if such a problem arises. PQA can be reached at (781) 338-3000 (ask for PQA) or <http://www.doe.mass.edu/pqa/>.

Types of education a youth may access

When a youth returns to the community, DYS will provide for educational services as part of the youth's grant of conditional liberty and service delivery plan. These educational services include public school, private school, alternative education, GED preparation, post-secondary education, vocational training, and job skills training.

Public school options include: the school district in which the youth resides; another school district (accessed through the Inter-District School Choice Program or through the Metco program); a vocational school; a charter school; or a transition school (discussed later in this chapter).¹

 **Tip for families:** DYS, parents, and local school districts must work together to support your child as he returns home. Make sure each is doing his or her part! If you need assistance, contact your child's DYS caseworker. If that fails, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Often, a youth does not want to go back to school because of his past experiences of humiliation and failure. This situation is not the fault of the child, but the responsibility of adults working with him. Often a youth cannot go back because he has been expelled from a school.


¹ For more information, see Mass. Department of Education, *Choosing a School: A Parent's Guide to Educational Choices in Massachusetts*, (Aug. 29, 2006), http://finance1.doe.mass.edu/schoice/choice_guide.html.

If a youth's parents, after the youth's sixteenth birthday, decide that the youth may drop out of school or that the youth need not enroll in school, other forms of education and training can and should be identified. These activities may include pursuing a GED or vocational training.

If a youth has graduated from high school or received a GED, he may enroll in a post-secondary education program. DYS caseworkers, DYS Education Liaisons, and the DYS Assistant Director of Education provide advocacy, support, administrative and technical assistance to these youths.² They work to ensure that youths:

- become enrolled;
- stay enrolled; and
- secure financial aid.³

In some cases, DYS pays for textbooks as well.⁴

 **Tip for families:** Talk to DYS about your child's educational goals. DYS has established relationships at community colleges and other programs, including with respect to financial aid offers, to enable DYS youths to better navigate the educational system and secure an education. DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1.

Academic credit transfer

Schools in the community are sometimes reluctant to accept academic credit that a youth earned while in DYS custody. When reviewing the transcript of a youth coming from DYS, public schools have a right to consider the nature of the curriculum and the courses for which credits were earned, including hours, rigor, and alignment with curriculum frameworks.

This being said, should a youth, while in DYS custody, succeed in meeting the local school district requirements for graduation regarding course offerings, hours and credits, and in passing the MCAS, he has a right, like any other student, to receive a high school diploma from his school district.


DYS and DYS' education provider, Commonwealth Corporation, have worked to address school reluctance to accept credits by developing a standardized academic transcript, also called a "universal transcript,"

² DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1.

³ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1.

⁴ DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1.

aligned with those used in public schools.⁵ DYS education programs across the state use a standardized transcript form to record and transfer information about students' educational performance.⁶ Pursuant to changes to policy guidelines, transcripts should be completed within 48 hours of a youth's transfer and/or release.⁷

 **Tip for families:** If your child is having trouble getting a school to accept credits, contact his DYS caseworker, whose role it is to ensure that credits get transferred from DYS educational programs to the community. If that fails, consider seeking help from one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Public school refusal to enroll a student

Public school districts sometimes refuse to enroll or re-enroll a student living in the district upon release from DYS custody. This may be illegal. In Massachusetts every person has the right to attend public school in the town where he resides.⁸ Unless a student has been legally expelled from public school, he has a right to return to his previous public school or to a different public school when he leaves DYS (if he is a resident of the particular community in question).

Suspension from public school

Suspension means temporary removal from school, as opposed to expulsion, which can be permanent.⁹ Public school districts must have a written discipline code that includes a list of offenses for which a student may be suspended.¹⁰ For that reason, it is impossible to list here all the reasons for which a youth could be suspended from public school.

However, the U.S. Supreme Court has ruled that public schools must provide effective notice and an informal hearing for all suspensions

5 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 73 + (Featured Practice: Helping Credit Recovery with Universal Student Transcripts).

6 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 73 + (Featured Practice: Helping Credit Recovery with Universal Student Transcripts).

7 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 73 + (Featured Practice: Helping Credit Recovery with Universal Student Transcripts).


8 Mass. Gen. L. ch. 76, § 5. Homeless youth have additional rights pursuant to the federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 *et seq.*

9 Some Massachusetts school districts allow their expelled students to return to their district's schools after a set period, such as a year.

10 Mass. Gen. L. ch. 71, § 37H.

of 10 days or less.¹¹ Public schools must provide “more formal hearings” for longer exclusions from school.¹²

A public school principal may suspend a student for a day or longer. If the suspension is “indefinite,” it must be treated as if it were an expulsion.

 **Tip for families:** If your child is threatened with an “indefinite suspension,” review local school district policies to see whether they require a hearing before such suspension. Even if the policies do not, you should consider the proposed discipline an expulsion and seek the due process protections accorded for expulsions, discussed below.

State statutes that allow for expulsion can also be used as grounds for suspension. Massachusetts General Laws Chapter 71, Section 37H provides that a principal may move to suspend a student who:

- is found in possession of a dangerous weapon (including, but not limited to, a gun or a knife) or a controlled substance on school premises or at school-sponsored or school-related events;¹³ or
- assaults a principal, assistant principal, teacher, teacher’s aide or other educational staff on school premises or at school-sponsored or school-related events.¹⁴

Any student to be suspended for such possession or assault must be notified in writing of an opportunity for a hearing before the principal.¹⁵ At the hearing, the student may bring representation and may present evidence and witnesses.¹⁶

In addition, Massachusetts General Laws Chapter 71, Section 37H1/2 provides that a principal may move to suspend a student who, while enrolled, is issued a criminal complaint charging him with a felony offense if the principal believes that the student’s continued presence in school would have a substantial detrimental effect on the general welfare of the school.¹⁷ The school must provide the student with written

¹¹ *Goss v. Lopez*, 419 U.S. 565, 584 (1975). The notice may be oral or written. *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

¹² *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

¹³ Mass. Gen. L. ch. 71, § 37H(a).

¹⁴ Mass. Gen. L. ch. 71, § 37H(b).


¹⁵ Mass. Gen. L. ch. 71, § 37H(c).

¹⁶ Mass. Gen. L. ch. 71, § 37H(c).

¹⁷ Mass. Gen. L. ch. 71, § 37H1/2(1).

notification of the charges and the reasons for such suspension prior to such suspension taking effect.¹⁸

Students with disabilities (whether or not they have been identified as students with disabilities) are entitled to certain protection from suspensions that exceed a total of ten days in a school year. See the section entitled “Protections of students with disabilities from suspensions and expulsions” below.

 **Tip for families:** Parents should receive notice of each proposed suspension. If you are not receiving such notices, contact the school principal. If the notice is not in a language that you understand, be sure that you have it translated as it contains important information.

Expulsion from public school

Expulsion from public school is legal only in certain circumstances. Before outlining those circumstances, it is important to note that the U.S. Supreme Court and Massachusetts courts have ruled that public school students have a right to some level of due process prior to suspensions of over ten days and expulsion. At a minimum, this due process right guarantees a student the right to notice and some meaningful opportunity to be heard.¹⁹

There are several Massachusetts statutory provisions that describe when a student may be expelled and the required process. These provisions are discussed below.

Massachusetts General Laws Chapter 76, Section 17, states that when a student is expelled from a public school, he shall, upon request, be given by the school committee a written statement of the reasons.²⁰ The state Department of Elementary and Secondary Education has issued an

¹⁸ Mass. Gen. L. ch. 71, § 37H1/2(1). A student may appeal a suspension under this provision to the superintendent, although the suspension remains in effect prior to any appeal hearing. The student must notify the superintendent, in writing, of his request for an appeal no later than five calendar days following the effective date of the suspension. The superintendent must hold a hearing with the student and the student’s parent or guardian within three calendar days of the suspension. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and has the right to have a lawyer present. The superintendent may overturn or alter the decision, including recommending an alternate educational program for the student. The superintendent must issue a decision within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the suspension. Mass. Gen. L. ch. 71, § 37H1/2(1).

¹⁹ *Parkins v. Boule*, 2 Mass.L.Rptr. 331, 1994 WL 879558, *13 (Mass. Super. 1994) (citing *Goss v. Lopez*, 419 U.S. 565, 581 (1975) (suspensions which exceed ten days and expulsions require “more formal hearings” than those a student would have for a suspension of 10 days or less). The notice may be oral or written. *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

²⁰ Mass. Gen. L. ch. 76, § 16.

advisory opinion stating that a student could be expelled pursuant to this provision if he assaults another student, but only if the misconduct and the penalty of expulsion are included in the school discipline code and if the expulsion is approved by the school committee.²¹ If a school committee seeks to expel a student pursuant to this provision, the committee must first give the student and the student's parent or guardian an opportunity to be heard.²²

Additionally, Massachusetts General Laws Chapter 71, Section 37H, provides that a public school principal may move to permanently expel a student who:

- is found in possession of a dangerous weapon (including, but not limited to, a gun or a knife) or a controlled substance on school premises or at school-sponsored or school-related events;²³ or
- assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events.²⁴

Any student to be expelled for such possession or assault must be notified in writing of an opportunity for a hearing before the principal.²⁵ At the hearing the student may bring representation and may present evidence and witnesses.²⁶

A student expelled under this provision has the right to appeal to the superintendent.²⁷ If a student has been properly expelled under this section, no other school district in Massachusetts has to enroll or provide educational services to that student.²⁸

Massachusetts General Laws Chapter 71, Section 37H1/2 provides that a public school principal may move to permanently expel a student if, while enrolled, the student is adjudicated a delinquent for a felony offense and if the principal believes that the student's continued presence in

21 Mass. Department of Education, Advisory Opinion On Student Discipline (Jan. 27, 1994, rev. Sept. 1, 1994 and Oct. 17, 1994), # 8, <http://www.doe.mass.edu.lawsregs.advisory/discipline/AOSD1.html>; see also *Parkins v. Boule*, 2 Mass.L.Rptr. 331, 1994 WL 879558, *10 (Mass. Super. 1994), n.8 (citing *Antell v. Stokes*, 287 Mass. 103, 107-108 (1934) for the proposition that "a student who violates disciplinary rules 'especially after having made [an] express promise to obey them, may be excluded from the school by the school committee acting in good faith'").

22 Mass. Gen. L. ch. 76, § 17.

23 Mass. Gen. L. ch. 71, § 37H(a).

24 Mass. Gen. L. ch. 71, § 37H(b).

25 Mass. Gen. L. ch. 71, § 37H(c).


26 Mass. Gen. L. ch. 71, § 37H(c).

27 Mass. Gen. L. ch. 71, § 37H(d). The student has ten days from the expulsion date to notify the superintendent of his appeal. The student has the right to have a lawyer present at this hearing. The subject matter of the appeal must be more than solely a dispute of the factual determination of whether the student violated the statute. Mass. Gen. L. ch. 71, § 37H(d).

28 Mass. Gen. L. ch. 71, § 37H(e).

school would have a substantial detrimental effect on the general welfare of the school.²⁹ The school must provide the student with written notice of the charges and the reasons for such expulsion prior to such expulsion taking effect.³⁰ A student may appeal an expulsion under this provision to the superintendent.³¹ Moreover, if a student has been properly expelled under this section, no other school district in Massachusetts has to enroll or provide educational services to that student.³²

If a student has been formally expelled, using the proper procedures, he has no legal right to continue receiving educational services from his district during the period of expulsion. However, federal law requires school districts to continue to provide special education services to students with special needs who have been suspended or expelled from school for more than ten school days. This topic is discussed below.


 **Tip for families:** If a student is expelled, it is important to find out if the expulsion is of limited duration and, if so, the length of expulsion. For example, in the Boston Public Schools, the length of expulsion is not to exceed one calendar year, and is to be determined by the Building Administrator. If a school district has established a length of expulsion, this information usually can be found in the code of discipline or in the student handbook.


²⁹ Mass. Gen. L. ch. 71, § 37H1/2(2).

³⁰ Mass. Gen. L. ch. 71, § 37H1/2(2).

³¹ Mass. Gen. L. ch. 71, § 37H1/2(2). The suspension remains in effect prior to any appeal hearing. The student must notify the superintendent, in writing, of his request for an appeal no later than five calendar days following the effective date of the expulsion. The superintendent must hold a hearing with the student and the student's parent or guardian within three calendar days of the expulsion. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and has the right to have a lawyer present. The superintendent may overturn or alter the decision, including recommending an alternate educational program for the student. The superintendent must issue a decision within five calendar days of the hearing. Such decision shall be the final decision of the school district. Mass. Gen. L. ch. 71, § 37H1/2(2).

³² Mass. Gen. L. ch. 71, § 37H1/2(2).

 **Tip for families:** If your child has been permanently expelled from public school, there may nonetheless be other public school options for him. For example, you might investigate whether a charter school would accept him as a student. Also, you might consider whether he could arrange to live in another community and attend school there. Some communities, such as some larger communities closer to Boston, are more used to accommodating youth with histories of expulsion. Other districts may have alternative educational programs for children who have been suspended. For further information, see the resource guide in the back of this book.

 **Tip for families:** For further information on rights regarding expulsion, see “School Suspension and Expulsion” under the Community Education Materials at <http://www.clcm.org/>.

Protections for students with disabilities from suspension and expulsion³³

Students receiving special education services have special protections against suspensions totaling more than ten days in one school year and against expulsion.³⁰ Under federal special education law, prior to such students being removed from school for more than ten days in one school year, the school must hold a meeting of school district staff, the parent or legal guardian and “relevant” members of the IEP team, called a “manifestation determination,” to determine whether the behavior triggering removal is a manifestation of the student’s disability.³⁴

The participants at the manifestation determination meeting determine whether the behavior was caused by, or had a direct and substantial relationship to, the student’s disability or is the direct result

³³ The rights described in this section, provided by the federal Individuals with Disabilities in Education Act and its regulations, apply not only to special education students in public schools, but also to publicly funded students placed in private special education facilities. *In Re: Northampton Public Schools & Lolani*, BSEA #04-0359 (hearing officer concludes “I can find no justification for excluding publicly funded private school students from the procedural protections accorded to all other disabled students under the IDEA”). Massachusetts students with disabilities also have protection from termination from private schools providing special education services pursuant to 603 CMR 18.05(7)(c) (planned termination) and 603 CMR 18.05(7)(d) and 603 CMR 28.09(12)(b) (emergency termination).

³⁴ 20 U.S.C. § 1415(k)(1)(E)(i); 34 CFR 300.530(e). Students who do not receive special education services, but who do have accommodations subject to a 504 plan also have the right to a manifestation determination meeting prior to suspension and expulsion. 20 U.S.C. § 1415(k)(1)(E)(i); 34 CFR 300.530(e)(1). However, should the manifestation determination team conclude that the behavior was unrelated to the disability and the student is disciplined, unlike a special education student, the student with the 504 plan does not have a right to receive educational services after the discipline is implemented.

of the local education authority's failure to implement the IEP.³⁵ If either of these conditions is met, the team concludes that the conduct is a manifestation of the disability.³⁶

In such a case, the school is required to provide appropriate assessments, supports and services to the student. The IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan.³⁷ If a behavioral intervention plan already exists, the team must review and modify it, as necessary, to address the problem behavior.³⁸

Additionally, except in the special circumstance discussed next, the IEP team must return the student to his placement unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.³⁹

Special circumstances for which the above does not apply and for which the school may remove the student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the youth's disability, exist if the youth:

- carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state educational agency (SEA) or a local educational agency (LEA);
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or,
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.⁴⁰

However, if the participants at the manifestation determination meeting conclude that the behavior was not related to the disability or the failure to implement the IEP, the student may be disciplined like a regular education student (such as by being removed from school for more than ten days).⁴¹

If a special education student is removed from his current school

35 20 U.S.C. § 1415 (k)(1)(F); 34 CFR 300.530(f).

36 20 U.S.C. § 1415(k)(1)(E)(ii); 34 CFR 300.530(e)(2).

37 20 U.S.C. § 1415(k)(1)(F)(i); 34 CFR 300.530(f)(1)(i).

38 20 U.S.C. § 1415(k)(1)(F)(ii); 34 CFR 300.530(f)(1)(ii).


39 20 U.S.C. § 1415 (k)(1)(F)(iii); 34 CFR 300.530(f)(2).

40 20 U.S.C. § 1415(k)(1)(G)(i)-(iii); 34 CFR 300.530(g)(1)-(3); *see also* 18 U.S.C. § 365(h)(3).

41 20 U.S.C. § 1415(k)(1)(C); 34 CFR 300.530.

placement for more than ten days in a school year, the school must provide educational services to the student.⁴² These educational services must meet the requirements of “free appropriate public education” (FAPE), so as to enable the child to continue to participate in the general education curriculum, although in a different setting, and to progress towards meeting his IEP goals.⁴³ The school must also provide a functional behavioral assessment, as well as behavioral intervention services and modifications, so that this behavior does not recur.⁴⁴ These rights exist even if the student is expelled. The educational services do not have to be provided at the school; they can be provided somewhere else.

Students who have not yet been found eligible for special education services may still ask for the protections of federal special education law if the student can show that the school district had knowledge of the student’s need for services.⁴⁵ The school’s knowledge may be demonstrated by such facts as the parent expressing concern in writing or requesting an evaluation, by student behavior, or by school staff expressing concern about a pattern of behavior to the school special education director.⁴⁶

 **Tip for families:** If your child receives special education services (or you believe he should receive such services) and he has been repeatedly suspended, keep track of the number of days. Your child has a right to a manifestation determination meeting if the suspensions exceed ten days.


42 20 U.S.C. § 1415(k)(1)(D)(i); 34 CFR 300.530(d).

43 20 U.S.C. § 1415(k)(1)(D)(i); 34 CFR 300.530(d).

44 20 U.S.C. § 1415(k)(1)(D), 20 U.S.C. § 1412(a)(l)(A), 34 CFR 300.530(d).

45 20 U.S.C. § 1415(k)(5); 34 CFR 300.534.


46 20 U.S.C. § 1415(k)(5); 34 CFR 300.534.

 **Tip for families:** For further rights regarding suspension and expulsion of special education students, see

- Protections for Special Education Students Who are Being Disciplined by School Officials, prepared by Children’s Law Center of Massachusetts (May 2005), available at <http://www.youthadvocacydepartment.org/pdfs/CLCM/SpEd%20Discipline%20revised%206-05.pdf>.
- “Expulsions and Suspensions of Special Education Students” prepared by Kids Legal Aid of Maine, available at http://www.kidslegalaid.org/parents/education/expulsion_specialed.htm.

Transition schools

Some DYS youths leaving DYS’s residential care and returning to school in their communities will be transitioned through a special school program before entering regular school classes. DYS uses transition schools for several reasons. First, DYS reports that some youths feel more comfortable transitioning back into their classes out of the mainstream. Second, DYS reports that the transition placement allows teachers to work with youths having trouble adjusting and addresses any security issues that may arise when they re-enter the community.


 **Tip for families:** If your child is returning to the community, talk to his DYS caseworker and the DYS Educational Liaison about school placement options. A youth or family can always request to have a discussion of what would be an appropriate educational program, both before and after the grant of conditional liberty is prepared and signed. Take care when making educational placement decision.

Youths requiring special education services should only be sent to transition schools if needed special education services would be available. Transition schools are not currently equipped to provide a full range of special education services. For example, a transition school (as they currently operate) is not appropriate for a student who needs a substantially separate classroom in order to access his education.


When evaluating transition schools, some issues to ask the DYS

caseworker about include the following questions:

- What will be the connection between the transition school and the DYS District or Satellite Office? Will the school report infractions by the student to the DYS caseworker? If so, what infractions will be reported?
- What classes will be offered? What is the curriculum? What are the qualifications and certifications of the teachers? How does the curriculum and teaching quality compare to the regular public school?
- Will all the special education services that my child needs be available at the school?

 **Tip for families:** If you are not sure whether your community's transition school provides special education services, be sure to ask.

The schools are designed to be short-term programs to help students identify their strengths and their next educational placement. While there is no set time period that students must remain at a Community Transition School, they attend on a quarterly basis and do not transition mid-quarter.⁴⁷

 **Tip for families:** If you feel that your child is not leaving the transition school soon enough or is leaving too soon, talk to DYS, the staff of the transition school, and the staff of the school your child is planning to ultimately attend. You may want to seek assistance from one of the organizations providing legal representation listed in the Resource Guide at the end of this book.

DYS has developed transition initiatives with local school districts in certain communities. Initiatives in Boston, Lynn, and Holyoke are described below.

- Boston Transitional Services Program

Youths returning to Boston after extended stays in DYS residential facilities receive assistance from the DYS Boston Transitional Services

⁴⁷ Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

Program, also known as the Boston Success Initiative.⁴⁸ This initiative is a collaboration between DYS and Boston Public Schools.⁴⁹

DYS and Boston Public Schools first develop a transition plan for the youth. Once the plan is in place, the youth will most likely return to the Boston Community Transition School (CTS), located at Youth Options Unlimited in Dudley Square, Roxbury.⁵⁰

Youths entering CTS are required to spend one full semester there and meet specific benchmarks before transitioning into a BPS high school.⁵¹ The purpose of the stay is to reintegrate the students into Boston Public Schools grade-level work.⁵²

CTS can serve up to 25 students and works primarily with youths at DYS grid levels 3-6 (serious offenses).⁵³

CTS is operated and staffed by Boston Public Schools.⁵⁴ CTS has one special education teacher who is able to provide special education services up to a specified special education level.⁵⁵ Additionally, youths with significant mental health problems can receive clinical services through Youth Opportunity Boston and help from a field coordinator who works with the DYS caseworker and the family.⁵⁶

More information about CTS is available at the Featured Practices section of University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), at http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf.

- Lynn Transition Program

Youths returning to Lynn from DYS residential treatment receive

48 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

49 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

50 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

51 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

52 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

53 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 42.

54 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

55 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).

56 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

assistance from the Lynn Transition Program, a collaboration between DYS and the Lynn Public Schools.⁵⁷ The school system provides a full-time transition coordinator who works exclusively with DYS youths returning to the community.⁵⁸ The transition coordinator operates from the Lynn DYS District Office and the MAST School, a transition school for DYS youths.⁵⁹ In addition to the MAST School, Lynn offers other options to DYS youths, such as alternative schools, a night school and a vocational high school.⁶⁰

- Holyoke Transition Program

Youths returning to Holyoke from DYS residential treatment receive assistance from a transition program operated by DYS and Holyoke Public Schools.⁶¹ The program is staffed by a Holyoke Public School teacher under the supervision of the principal of Holyoke's alternative school.⁶² DYS and Holyoke share responsibility for school supplies.⁶³

High school students must complete any time remaining in the current semester before transferring into a standard Holyoke Public Schools high school, while middle school students must first complete the current academic quarter.⁶⁴

Special rights for youths receiving special education services

IEP's transition plan

In addition to the re-entry plan for the youth that DYS drafts, a youth is entitled to another transition plan if he has an IEP. This long-range plan, developed at an education team meeting and contained in

57 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

58 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

59 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

60 DYS and Department of Education, Report to the House and Senate Committees of Ways and Means on December 1, 2005 pursuant to line items 4200-0010 and 7028-0031 of the Fiscal Year 2006 General Appropriations Act (draft) (on file with MHLAC).

61 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

62 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

63 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

64 University of Massachusetts Donahue Institute, Evaluation of the Department of Youth Services Education Initiative Final Report (2008), http://www.mass.gov/Eeohhs2/docs/dys/eval_education_initiative.pdf, at 41.

the IEP, describes the skills and services that the youth would need upon transitioning from school to adult life.⁶⁵ Beginning at age sixteen, the IEP must include this transition plan describing the services to be rendered.⁶⁶

“Stay put” right

Any youth who receives special education services and has been released from DYS custody, if there is a dispute about the youth’s educational placement, has the right to remain in the last agreed upon educational placement until the dispute is resolved.⁶⁷ This principle is called the “stay put” right.⁶⁸ Changing the placement of a student receiving special education services requires an education team meeting and the agreement of the youth’s parents.⁶⁹ If a change of placement is made without following this process, contact one of the organizations that provides legal representation listed in the Resource Guide at the end of this book.

Special education youths have the right under the “stay put” provision to initial admission to a public school even if the school is disputing the right to that admission, at least until a resolution is reached.⁷⁰ In addition, if a youth moves from one community to another within a state, the new school district must provide such a child with special education services consistent with the IEP that was in effect before the move.⁷¹ Thus, if a youth is released from DYS to a new school district, that new district cannot refuse to enroll the youth. The student must be enrolled immediately and provided the services described in the IEP.

Alternative education⁷²

For a youth having difficulties finding an educational placement in the community, alternative education may be appropriate. Alternative education is an initiative within a public school district, charter school, or educational collaborative serving at-risk students whose needs are not being met in the traditional school setting. “At-risk” students can include:

65 20 U.S.C. § 1414 (d)(1)(A)(VIII).

66 20 U.S.C. § 1414 (d)(1)(A)(VIII).

67 20 U.S.C. § 1415 (j); 34 CFR 300.518; 603 CMR 28.08(7).

68 20 U.S.C. § 1415 (j); 34 CFR 300.518; 603 CMR 28.08(7). See In Re: Harwich Public Schools and Spaulding Youth Center, BSEA # 06-2300 (“Massachusetts and federal regulations allow for limited exceptions to the universal application of this principle in instances of serious disciplinary infractions or substantial risk of injury to the student or others if a stay put placement is required. To change a student’s placement otherwise requires a court order. 603 CMR 28.08(7)(d).”)

69 20 U.S.C. § 1415 (k)(1)(E).

70 34 CFR 300.518(b); 603 CMR 28.08(7)(a).

71 20 U.S.C. § 1414 (d)(2)(c)(i)(I).


72 The information in this section is taken from the Massachusetts Department of Elementary and Secondary Education web pages on alternative education, available at <http://www.doe.mass.edu/alted/>.


pregnant or parenting teens; truant students; suspended or expelled students; returned dropouts; delinquent youth; and other students who are not meeting local requirements for promotion.

Alternative education may operate as a program or as a separate self-contained school. In either case, alternative education is under the control of the district's school committee.⁷³

Alternative education can serve students for varying amounts of time. The program or school may have the goal of keeping students until graduation or may have the goal to transition students back to a traditional middle or high school.

Students enrolled in alternative education programs or schools must be taught to the same academic standards established for all Massachusetts students.

 **Tip for families:** When choosing an alternative program or school for your child, research what services each program or school offers in order to determine which one is most appropriate. For an alternative education to be helpful, the student must be carefully matched to a program that will meet his needs. Further, the curriculum must be as challenging as that offered to students in traditional classrooms. In addition, the program or school's facilities, transportation services, non-core courses, and extra-curricular activities must be comparable to the traditional program of studies.

 **Tip for families:** More information on alternative education is available at the Massachusetts Department of Elementary and Secondary Education (DESE) website at <http://www.doe.mass.edu/alted/>. To determine what alternative programs and schools exist in your area, visit <http://www.doe.mass.edu/alted/>, then click on "Programs" under Alternative Education or contact the Office of the Superintendent in your local school district.

73 P.L. 107-110, § 1401(b).

CHAPTER 21:

SUPERVISION IN THE COMMUNITY

Caseworker supervision and support	21.2
DYS levels of supervision	21.3
Intermediate Sanctions model	21.5
DYS monitoring of adherence to the grant of conditional liberty	21.6

SUPERVISION IN THE COMMUNITY

Caseworker supervision and support

When DYS involved youths are released back to the community on a grant of conditional liberty, they typically reside with a parent, guardian, or foster parent or in an independent living program. These youths are supervised and supported by DYS caseworkers, who are located at DYS District and Satellite Offices.¹

While in the past, DYS involved youths would regularly report to DYS locations (called Day Reporting Centers and, later, Community Re-Entry Centers), now DYS caseworkers work out of District and Satellite Offices but visit youths and their families in the community (at home, school or work).² In doing so, they provide case management services to youths to ensure that the youths have the services they need to function and remain in the community.³


There are 20 District and 9 Satellite Offices across Massachusetts.⁴ These offices are run by DYS and vendors in partnership. Each DYS Region contracts with a vendor. These vendors are:

- Metro Area -- Roxbury YouthWorks, Inc.
- Central Area -- Youth Opportunities Upheld (YOU), Inc.
- Northeast Area -- NFI Massachusetts, Inc.
- Southeast Area -- Old Colony YMCA
- Western Area -- Center for Human Development.⁵

Certain District Offices may also subcontract to other vendors.⁶ There are two DYS offices specifically geared for girls: Boston Girls' District Office in Roxbury and the Young Women's Center in Springfield.

As part of a youth's introduction to the District or Satellite Office, he will participate in a formal intake meeting with his caseworker to review the expectations for him upon his return to the community.⁷

1 District Offices were formerly called Community Re-entry Centers and, before that, Day Reporting Centers.
2 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 1; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 41-45.
3 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.
4 DYS Community Services: Community Locations & Provider Agency Staffing Guide (Oct. 20, 2009).
5 DYS Community Services: Community Locations & Provider Agency Staffing Guide (Oct. 20, 2009).
6 DYS Community Services: Community Locations & Provider Agency Staffing Guide (Oct. 20, 2009).
7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 41.

 **Tip for families:** Encourage your child to stay in close communication with his DYS caseworker and other relevant District or Satellite Office staff. Better communication helps DYS help your child.

Unlike the community offices they replaced, DYS District and Satellite Offices do not provide any direct treatment services. Instead, DYS caseworkers based at these offices identify community-based resources for the youths that they serve.⁸ To do so, caseworkers and other District and Satellite Office staff maintain relationships with local service providers and the regional Community Service Agency (CSA).⁹ DYS caseworkers can work with a DYS Resource Specialist and a Family Intervention Specialist to help identify these community resources.¹⁰ In addition, staff at the District or Satellite Office will help the youth find employment, such as by linking youths with appropriate agencies including employment centers and One-Stop Career Centers.¹¹

The DYS caseworker should support youth and family participation in behavioral health services.¹²

Once the DYS caseworker and the youth have identified appropriate services, they are described in the youth's service delivery and relapse prevention plans.¹³

DYS levels of supervision

When a youth is released from DYS confinement and is living in the community on a grant of conditional liberty, DYS will supervise the youth using a level system. This system establishes the nature of supervision and the frequency of contact between the youth and DYS. If a youth does well at any given level of supervision, his supervision will be reduced until he is ready to be discharged from DYS.

DYS youths are released to the community at the appropriate level of supervision, with level three being the maximum supervision level and level one being the minimum supervision level.¹⁴

8 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

9 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 3-4.

10 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 3.

11 DYS, 2007 Annual Report (Mar. 2009), http://www.mass.gov/Eeohhs2/docs/dys/annual_report_2007.pdf, at 44.

12 DYS and EOHHS, DYS Strategic Direction on Children's Behavioral Health (Jan. 20, 2010), <http://www.rosied.org/resources/Documents/DYS%20protocol.final.doc>, at 4.

13 DYS, DYS Responses to MHLAC Questions (Jan. 22, 2010) (on file with MHLAC), at 4.

14 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 42.

The supervision levels are based upon risk level determinations, which are in turn based upon the results of the Youth Level of Service/ Case Management Inventory (YLS/CMI) risk prediction tool.¹⁵ The tool identifies specific areas or domains in the youth's life that are associated with a greater or lesser likelihood to violate and the CMI portion of the tool helps guide the caseworker put in place services and structure to address those risks.¹⁶ The tool assigns one of four risk levels based on score: 1 (very high); 2 (high); 3 (moderate); or 4 (low).¹⁷

The risk level score on the YLS/CMI determines the supervision level to which a youth will be assigned in the community:

- A youth with a risk level of **very high or high** will be assigned to supervision level 3;
- A youth with a risk level of **moderate** will be assigned to supervision level 2;
- A youth with a risk level of **low** will be assigned to supervision level 1.¹⁸

The supervision levels operate as follows:

- **Level 3:** Minimum of 4 contacts per week (including at least 3 face-to-face caseworker contacts + collateral contacts). The youth shall be in a structured itinerary between 2 p.m. and 7 p.m., 6-7 days per week (except youthful offenders for whom the time frame is 2 p.m. to 11 p.m.).
- **Level 2:** Minimum of 3 contacts per week (including at least 1 face-to-face caseworker contact + collateral contacts). The youth shall be in a structured itinerary between 2 p.m. and 7 p.m., 3-5 days per week (except youthful offenders for whom the time frame is 2 p.m. to 11 p.m.).
- **Level 1:** Minimum of 2 face-to-face contacts per week by caseworker. The youth shall be in structured activities in the community between 2 p.m. and 7 p.m.¹⁹

DYS conducts monthly progress reviews for youth on all three levels of community supervision.²⁰ Reviews must be documented to record the youth's progress or lack of progress on a level.²¹ Documentation

¹⁵ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 41-42.

¹⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 41-42.

¹⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 42.

¹⁸ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 42.

¹⁹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 42-43.

²⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

²¹ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

should highlight achievements, areas where improvement is needed, and how the youth will be supported in making such improvements.²²

DYS must complete a formal supervision reassessment every 90 days to adjust the supervision level up or down as necessary.²³ This reassessment may occur sooner than every 90 days if the caseworker considers it appropriate.²⁴ Further, a caseworker may request an override of a youth's score on a supervision reassessment (to be approved by the district manager).²⁵

Intermediate Sanctions model

DYS uses an Intermediate Sanctions model to supervise youths in the community.²⁶ The model combines treatment with sanctions for non-compliant behavior.²⁷ DYS uses a wide range of immediate and intermediate sanctions and they are imposed based on the severity of the violation of the grant of conditional liberty, the number and severity of past violations, the presence of other risk factors, and public safety.²⁸ Some examples of intermediate sanctions include:

- warnings;
- amendments to the grant of conditional liberty;
- referrals to community resources;
- various levels of more intense community supervision;
- short-term periods of confinement.²⁹

Youths who have repeated violations receive more restrictive sanctions.³⁰

The caseworker monitors and enforces a youth's compliance with his grant of conditional liberty.³¹ This task is done through intermediate sanctions and/or revocations resulting in re-confinement.³² DYS dictates that "[w]henever possible, alternatives other than a return to placement shall be used."³³

22 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

23 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

24 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

25 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 44.

26 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.

27 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.

28 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.


29 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45. Short-term periods of confinement are pursued through the revocation of a youth's grant of conditional liberty, discussed in Chapter 17, Grant of Conditional Liberty. Email communication from Crispin Birnbaum, DYS to MHLAC (Mar. 4, 2010).

30 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.

31 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.

32 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.

33 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 45.


 **Tip for families:** It is important to keep in mind this requirement that DYS use, whenever possible, alternatives to re-confinement. You may cite it when advocating to keep your child in the community after an alleged violation.

DYS monitoring of adherence to the grant of conditional liberty

The youth's DYS caseworker will monitor a youth's adherence to the conditions of his grant of conditional liberty, such as curfew and school attendance.

Sometimes DYS will want to make sure that a youth stays within a specific geographic area, that a youth does not enter a specific geographic area, or that a youth is where he says he is at all times. DYS may equip a youth with a device, such as an electronic monitoring device or a beeper, to make sure that he stays within these limits. DYS also may place calls to a youth's employer to make sure the youth is going to work.

Youths may be required to submit to drug testing. Failing a drug test does not automatically mean that the youth will be brought back to a facility, but it is possible.

 **Tip for families:** Nearly all committed youths testing positive for drugs test positive for marijuana, so if your child is using marijuana, take his drug use seriously.

CHAPTER 22:

DISCHARGE FROM DYS


Discharge	22.2
Discretionary discharge	22.2
Extension of commitment.....	22.4
Assent of Ward	22.4
Risk of recidivism.....	22.5

DISCHARGE FROM DYS

Discharge

Discharge is the irrevocable termination of a youth from the custody of the Department of Youth Services. Typically, a DYS committed youth is discharged from DYS when he reaches age 18 (or age 21 if the youth is adjudicated a youthful offender)¹ and the commitment, as originally determined by the judge presiding over the delinquency proceeding, expires.² Since Massachusetts has indeterminate sentencing in Juvenile Court, if a judge sentences a juvenile to a commitment to DYS, then the commitment must last until age 18 (unless DYS decides to discharge early pursuant to its discretionary discharge authority, described below). Once a youth is committed to DYS, DYS determines when he is released to the community.

Once a youth is discharged from DYS, he is no longer involved with the DYS system. Discharge from DYS is different from release from DYS custody. Youths who are released from DYS custody are still subject to DYS control while they reside in the community. By contrast, youths who are discharged from DYS are free of all DYS control.

 **Tip for families:** After your child is discharged from DYS custody, he no longer is subject to a grant of conditional liberty or DYS supervision, but he still must make sure to follow the law.

Discretionary discharge

At any point in a youth's commitment, DYS may, with notice to the court, discharge a youth from DYS control early.³ DYS calls this practice "discretionary discharge." After such a discharge, the youth is no longer committed to DYS. Before pursuing such a discharge, DYS must be satisfied that discharge is consistent with the protection of the public.

The DYS Regional Director may recommend a youth for consideration for a discretionary discharge if the youth meets any of the

1 The prosecutor decides if a youth is to be indicted as a youthful offender.

2 Mass. Gen. L. ch. 120, § 16; 109 CMR 9.05(1)(c); DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63; *see also* Mass. Gen. L. ch. 119, § 58. Discharge may also occur upon: death of the juvenile; revocation of the DYS commitment by a court of competent jurisdiction; expiration of commitment by reason of the youth reaching age eighteen (or age 21 in the case of commitment as a Youthful Offender), or upon the expiration of an Assent of Ward agreement for a voluntary extension of commitment; or enlistment of the youth in the U.S. Armed Forces. DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62-63.


3 Mass. Gen. L. ch. 120, § 6(e).

following criteria:

- commitment of the youth to another state agency or to adult probation provided that no special conditions relating to DYS involvement have been decreed by a court or agreed to by DYS and the receiving agency;
- after a minimum of one crime free year has passed since the date of last commitment by the court, provided 1) that this period includes a minimum of six continuous crime free months following release from secure treatment, group care, or any other residential placements, or 2) six continuous crime free months at home, or in a transitional living program, unless the mandatory discharge age has been reached;
- the youth becomes legally married; or
- there are exceptional circumstances in the case which present compelling reasons for a discretionary discharge. Such circumstances must be fully documented in the request.⁴

A letter requesting a discretionary discharge from DYS must be submitted to the DYS Regional Director by the tenth of the month in which the discharge is being sought.⁵ The Regional Director must submit the request to the Commissioner.⁶ If approved by the DYS Commissioner, the discharge will become effective as of the last Monday of the month in which the request was made.⁷ The youth and the Clerk Magistrate of the committing court will be notified in writing of the approved discharge by the DYS Commissioner's Office.⁸

For youths with certain offenses, DYS must take further notification steps.⁹

 **Tip for families:** DYS does occasionally exercise the early discharge option when warranted. Parents or guardians can discuss this option with their child's caseworker directly. You also may want to discuss this option with a lawyer or outside advocate.

4 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

5 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

6 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

7 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

8 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

9 Mass. Gen. L. ch. 120, § 6(e); Mass. Gen. L. ch. 120, § 12.

Discretionary discharge, like any other discharge from DYS, requires a detailed review of the youth's service delivery plan to ensure that services are in place and that DYS has taken the necessary steps to maximize the youth's chances of success.¹⁰

Extension of commitment

A commitment to DYS typically ends when a youth reaches age 18 (or age 21 if the youth is adjudicated a youthful offender). Until recently, DYS, in some cases, would rely on a state statute to seek an extension of commitment until age 21.¹¹ The statute stated that, when DYS believed that discharge of a youth would pose a physical danger to the public, DYS could apply to the committing court for approval of an order of extended control until age 21.¹²

In February 2009, the Massachusetts Supreme Judicial Court, in *Kenniston v. Department of Youth Services*, ruled that the extension of commitment process, as outlined in the statute, did not provide youths with substantive due process and was therefore unconstitutional.¹³ The result is that DYS may no longer rely on this statute to pursue an extension of commitment beyond age 18. It is possible that DYS will ask the legislature to revise the statute to include constitutional protections so that DYS may once again pursue extensions of commitment in the future.

Assent of Ward

For some committed youths, DYS may seek an "Assent of Ward," a voluntary extension of DYS supervision for a temporary period of time beyond the youth's eighteenth birthday.¹⁴ This option is usually offered to a youth that is aging out of the system and is in need of continued services to transition to the community.¹⁵

An Assent of Ward for an initial three month period must be approved in writing by the DYS Regional Director.¹⁶ The agreement may be reviewed for an extension of the agreement after the three month period.¹⁷ The youth or DYS may terminate the agreement at any time.¹⁸ If a youth violates the terms and conditions of the agreement, DYS may

¹⁰ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 63.

¹¹ Mass. Gen. L. ch. 120, §§ 16-19.

¹² Mass. Gen. L. ch. 120, §§ 16-19.

¹³ 453 Mass. 179 (2009).

¹⁴ Mass. Gen. L. ch. 120, § 16; DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

¹⁵ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

¹⁶ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

¹⁷ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

¹⁸ DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

immediately terminate it.¹⁹ DYS must hold an administrative meeting thirty days prior to the youth turning age eighteen in order to discuss the Assent of Ward.²⁰ A youth's DYS supervision cannot be voluntarily extended beyond age 21.²¹

Risk of recidivism

In Massachusetts, recidivism of a DYS involved youth is defined as a conviction in the adult criminal justice system (either misdemeanor or felony) within twelve months of release from DYS' services (at age 18 or 21).²² Twenty-nine percent of individuals who were discharged from DYS in 2005 were convicted of another crime within twelve months of release, and still other youths had cases pending in adult criminal court.²³

DYS, youths, and families need to work together to prevent the commission of new crimes. Individuals who were committed to DYS because of a weapons, motor vehicle or public order offense were most likely to be convicted of another crime within one year of discharge from DYS.²⁴ Furthermore, individuals from Suffolk and Essex county were at highest risk for recidivism.²⁵ Many individuals who have been committed to DYS get in trouble again because they have mental health problems that continue when they return to the community where they may not be receiving treatment or services. DYS lists having a mental or emotional disability as a primary risk factor for recidivism.²⁶

Since a DYS involved youth is often released to the community when he is age seventeen or older, future crimes will not be tried in juvenile court. If a youth commits another crime at age seventeen or older, he will be charged as an adult, and the criminal justice system for adults is harsher and offers fewer services. DYS, the youth, and the youth's family must cooperate to prevent this outcome.

19 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

20 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

21 DYS, Case Management Practice and Procedure Manual (June 14, 2010), at 62.

22 "Massachusetts Juvenile Justice Case Study Results" in Blomberg, Thomas G., George Pesta, Colby Valentine. "The Juvenile Justice No Child Left Behind Collaboration Project: Final Report 2008, available at http://www.criminologycenter.fsu.edu/p/nationalDataClearinghouse/State%20Structures/Massachusetts_Case_Study.pdf, at 8.

23 DYS, 2009 Juvenile Recidivism Report (Dec. 17, 2009), at 3.

24 DYS, 2009 Juvenile Recidivism Report (Dec. 17, 2009), at 18.

25 DYS, 2009 Juvenile Recidivism Report (Dec. 17, 2009), at 18.

26 DYS, 2009 Juvenile Recidivism Report (Dec. 17, 2009), at 7.

CHAPTER 23:

RESOURCE GUIDE

Department of Youth Services	23.2
Other Massachusetts state agencies	23.3
Legal representation	23.6
Mental and physical health services	23.10
Advocacy and support organizations	23.12
General resources	23.15
Education resources	23.15
Employment resources.....	23.17
Housing resources	23.19
Crime and violence prevention	23.22
Mentoring organizations.....	23.23
Civic engagement.....	23.23
Sexuality resources.....	23.25
Spiritual engagement.....	23.26
Web-based resource lists	23.26
Publications	23.27
General issues.....	23.27
Criminal law	23.28
Education.....	23.28
Special education	23.29
Housing	23.30
Insurance.....	23.31
Mental health and substance abuse services	23.31
Federal and state laws and regulations	23.32

RESOURCE GUIDE

Department of Youth Services

Central Office

**600 Washington Street
Boston, MA 02111
(617) 727-7575**

<http://www.mass.gov/dys>

Email: dysinfodesk@massmail.state.ma.us

Metro Region Office

**425 Harvard Street
Dorchester, MA 02124
(617) 740-0111**

Covers Suffolk County.

Central Region Office

**Sharp Building, Westborough State Hospital
288 Lyman Street
Westboro, MA 01581
(508) 898-9562**

Covers Worcester County (excluding the town of Athol and including the town of Bellingham).

Northeast Region Office

**33 Gregory Street
Middleton, MA 01949
(978) 646-2300**

Covers Essex and Middlesex Counties.

Southeast Region Office

**Murray Building
60 Hodges Avenue
Taunton, MA 02780
(508) 824-1484**

Covers Barnstable, Bristol, Dukes, Nantucket, Norfolk (except the town of Bellingham), and Plymouth Counties.

Western Region Office

**280 Tinkham Road
Springfield, MA 01129
(413) 783-0781**

Covers Berkshire, Hampden, Franklin and Hampshire Counties and the town of Athol.

Other Massachusetts state agencies

Department of Mental Health (DMH)

<http://www.mass.gov/dmh>

(617) 626-8000

Information and Referral Line: (800) 221-0053

The state agency responsible for providing services and supports to meet the mental health needs of individuals with serious mental illness. DMH information desk accepts emails at dmhinfo@dmh.state.ma.us. DMH has an information and referral specialist at (800) 221-0053. DMH information desk accepts emails at dmhinfo@dmh.state.ma.us. DMH has an information and referral specialist at **(800) 221-0053**.

- **The DMH Resource Guide**, available at DMH’s website, is a directory of DMH’s Areas, Service Site Offices, facilities and contact information. This guide points consumers towards DMH contacts in their town, city or region.
- **The DMH Consumer and Family Resource Guide**, available at DMH’s website, is a listing of information and referral resources. This guide includes hotlines, warmlines, other resources for consumers, and a listing of recovery learning communities (RLCs). RLCs are DMH consumer-run networks of self-help, peer support, information and referral, advocacy and training activities.

Department of Developmental Services (DDS)

<http://www.mass.gov/dds>

(617) 727-5608

The state agency responsible for providing services and supports to meet the needs of individuals with intellectual disabilities. DDS information desk accepts emails at Info@state.ma.us. DDS was formerly called the Department of Mental Retardation (DMR).

Division of Medical Assistance (DMA or “MassHealth”)

<http://www.mass.gov/masshealth>

MassHealth Member Customer Service Center: (800) 841-2900

TTY: (888) 665-9997

DMA or MassHealth is the state agency that provides health insurance -- or help in paying for private health insurance -- to qualifying Massachusetts children, families, seniors, and people with disabilities.

Children’s Behavioral Health Initiative (CBHI)

<http://www.mass.gov/masshealth/childbehavioralhealth>

MassHealth and the state Executive Office of Health and Human Services (EOHHS) have created a program called the Children’s Behavioral

Health Initiative (CBHI) to implement the *Rosie D.* order. The order requires Massachusetts to provide home-based mental health services to Medicaid-eligible youths with serious emotional disturbance who need such home-based services,

The Commonwealth Health Insurance Connector Authority (“the Connector”)

<http://www.mahealthconnector.org>

(617) 933-3140

(877) MA-ENROLL

The Connector is a state public agency that helps qualified Massachusetts adult residents purchase health care coverage. The Connector was created to implement a 2006 law, Chapter 58 of the Acts of 2006, which requires that uninsured adults in Massachusetts buy health insurance. The Connector administers two programs: Commonwealth Care and Commonwealth Choice.

- Commonwealth Care offers subsidized health insurance to low income residents of Massachusetts, through a choice of private health insurance plans. This may include an adult child if he or she cannot work on a regular basis but does not qualify as disabled. For more information on Commonwealth Care, contact (877) MA-ENROLL or <http://www.macommonwealthcare.com>.
- Commonwealth Choice provides commercial health insurance plans to uninsured individuals and small businesses. The “Young Adult Plan” is for independent individuals ages 19 to 26.

Department of Elementary and Secondary Education (DESE)

<http://www.mass.gov/doe>

(781) 338-3000

TTY: (800) 439 2370

DESE, formerly the Department of Education (DOE), is the state agency charged with ensuring improved teaching and learning in Massachusetts public schools.

Special Education in Institutional Settings (SEIS)

<http://www.doe.mass.edu/contact/phone.asp?mode=org#>

(781) 338-3303

SEIS, a division of the state Department of Elementary and Secondary Education, is responsible for providing special education services to youth with disabilities residing in state facilities operated by the Departments of Mental Health, Public Health, and Youth Services, and in county correctional facilities.

Department of Public Health (DPH)

<http://www.mass.gov/dph>

(617) 624-6000

TTY: (617) 624-6001

Public Health Information Line: (866) 627-7968

DPH is the state public health agency. It provides direct health care, education and prevention services.

Bureau of Substance Abuse Services (BSAS)

<http://www.mass.gov/dph/bsas/>

(617) 624-5111

BSAS, a division of the Department of Public Health, oversees state substance abuse prevention and treatment services. BSAS operates the Massachusetts Substance Abuse Information and Education Helpline, which may be contacted at **(800) 327-5050**, **(888) 428-8321** (TTY) or <http://www.helplin-online.com>. The BSAS Office of Youth and Young Adult Services also publishes the Massachusetts Youth and Young Adult Services Directory, available at <http://www.mass.gov/eohhs/docs/dph/substance-abuse/ooyas-directory-print.pdf>.

Office of Patient Protection (OPP)

<http://www.mass.gov/dph/opp/>

(800) 436-7757

OPP, a division of the Department of Public Health, oversees a range of protections for Massachusetts consumers and other individuals who receive health coverage from a Massachusetts carrier, insurer or HMO.

Department of Children and Families (DCF)

<http://www.mass.gov/dcf>

(617) 748-2000

Child-at-Risk Hotline: (800) 792-5200

DCF, formerly the Department of Social Services (DSS), is the state agency charged with protecting children from child abuse and neglect.

Department of Early Education and Care (DEEC)

<http://www.eec.state.ma.us/>

(617) 988-6600

DEEC is the state agency responsible for the licensing of early education and care programs, providing financial assistance for child care services to low-income families, information and referral services, parenting support for all families, and providing professional development opportunities for staff in the early education and care field.

The Office of the Child Advocate (OCA)

<http://www.mass.gov/childadvocate/>

(617) 979-8360

(866) 790-3690 (toll free)

The OCA is an independent office that reports directly to the Governor. The goal of the OCA is to ensure that every child involved with child welfare or juvenile justice agencies in Massachusetts is protected from harm and receives appropriate and effective services delivered in a timely and respectful manner. The OCA accepts calls from (or on behalf of) youth in custodial care who have a complaint or want assistance. The OCA does **not** provide emergency services. Claims of child abuse and neglect should be directed to DCF's Child-at-Risk Hotline at **(800) 792-5200**.

Massachusetts Rehabilitation Commission (MRC)

<http://www.mass.gov/mrc>

(800) 245-6543 (voice/TDD) or (617) 204-3600

The MRC assists individuals with disabilities to live and work independently. MRC is responsible for Vocational Rehabilitation Services, Community Services, and eligibility determination for the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) federal benefits programs for Massachusetts citizens with disabilities. MRC serves people with all types of disabilities except those who are blind. Individuals with visual disabilities are served through the Massachusetts Commission for the Blind (MCB).

Legal representation

Mental Health Legal Advisors Committee (MHLAC)

<http://www.mhlac.org>

(617) 338-2345

(800) 342-9092 (toll free)

MHLAC is an independent state agency charged with providing information, advice, advocacy and legal representation to individuals with mental health issues in Massachusetts. MHLAC provides legal assistance to youths, including DYS involved youths, on matters related to mental health services and special education.

Mental Health Legal Advisors Committee's (MHLAC's) DYS Project

http://www.mhlac.org/DYS_Project.htm

(617) 338-2345

(800) 342-9092 (toll free)

MHLAC's DYS Project provides legal advice and representation. The project can be reached at ext. 124.

Youth Advocacy Department (YAD) of the Committee for Public Counsel Services (CPCS)

<http://www.youthadvocacydepartment.org>

(617) 989-8112 (Boston)

A list of other YAD offices is available at <http://www.youthadvocacydepartment.org/contact/contactyad.html>.

YAD, within the state public defender agency (CPCS), provides lawyers to represent juveniles in delinquency and youthful offender cases. YAD also provides lawyers in hearings on the revocation of a grant of conditional liberty for indigent youths involved with DYS. YAD also offers social services, psychological assessments, case management, and referrals to community services. YAD's Community Notebooks, a resource for youths in the juvenile justice system, are available at <http://www.youthadvocacydepartment.org/outreach/outreach-communitynotebooks.html>. YAD has offices across the state.

EdLaw Project

<http://www.youthadvocacydepartment.org/edlaw/edlaw.htm>

(617) 989-8100 ext. 8150

An advocacy organization, jointly operated by the Children's Law Center of Massachusetts and the Youth Advocacy Department (YAD), working to ensure the rights of Boston youths to a quality education. Provides legal representation for children facing expulsions, suspensions or disciplinary proceedings, or in matters concerning special education. To be eligible for legal services, the youth must reside in Boston and meet legal services income guidelines. The EdLaw Project has a special focus on advocacy for court-involved youths.

Juvenile Defense Network (JDN)

<http://www.youthadvocacydepartment.org/jdn/jdn-about.html>

(617) 989-8100 ext. 8127

JDN is a training and support project to aide juvenile defense lawyers in Massachusetts who represent children in delinquency and youthful offender cases. JDN is an initiative of the Youth Advocacy Project. The JDN resource page includes a listing of DYS contacts by region.

Health Care For All (HCFA)

<http://www.hcfama.org/>

(617) 350-7279

TTY: (617) 350-0974

(800) 272-4232 (helpline)

HCFA is a Massachusetts organization dedicated to making quality, affordable health care accessible to everyone, regardless of income, social or economic status. HCFA offers information referral and personal and legal advocacy. The HCFA Helpline provides information and advice

regarding health care questions.

Health Law Advocates (HLA)

<http://www.hla-inc.org>

(617) 338-5241

HLA is a non-profit organization providing legal services to eligible clients in discrete areas of health law. HLA's Children's Mental Health Access Project works to improve access to mental health services for children throughout Massachusetts, using advocacy, education and promotion of systemic change. The project seeks to represent children denied access to essential mental health services. The program has a particular focus on youths involved with the Department of Children and Families.

Children's Law Center of Massachusetts

<http://www.clcm.org>

(781) 581-1977

The Children's Law Center of Massachusetts is a legal services agency that provides direct representation for children and youths in juvenile justice, child welfare and educational matters. The center has a pro bono panel of 80 lawyers who provide direct representation to indigent children in education matters. Training and supervision of lawyers is provided by the center. The Center is located in Lynn and their service area is limited to the Northeast part of Massachusetts.

Juvenile Rights Advocacy Project at Boston College School of Law

<http://www.bc.edu/schools/law/jrap/>

(617) 552-2350

The Juvenile Rights Advocacy Project specializes in cross-system representation of youths (particularly girls) involved in the juvenile justice system. The project serves the Roxbury and Dorchester areas, as well as Lowell.

Juvenile Justice Center of Suffolk University Law School

<http://www.law.suffolk.edu/academic/clinical/iic/iic.cfm>

(617) 305-3200

The clinic serves the Boston Juvenile Court, South Boston and West Roxbury, using law students to represent juveniles charged with crimes. Staff attorneys and clinical supervisors help in the defense of clients.

Criminal Justice Institute at Harvard University School of Law

<http://www.law.harvard.edu/academics/clinical/cij/>

(617) 496-8143

Harvard Law School students, supervised by Criminal Justice Institute attorneys, represent both adults and juveniles on a variety of matters from misdemeanors to felonies. The clinic services Dorchester Juvenile &

Roxbury District Courts.

Children and Family Law Program of the Committee for Public Counsel Services

http://www.publiccounsel.net/Practice_Areas/cafl_pages/civil_cafl_index.html

(617) 482-6212

The Children and Family Law Program of the Committee for Public Counsel Services provides legal representation to indigent parents and children in state intervention/child welfare matters, including care and protection proceedings, CHINS cases, actions to dispense with parental consent to adoption, state-agency-sponsored guardianships, and any other proceeding regarding child custody where the Department of Children and Families (DCF) is a party or where the court is considering granting custody to DCF.

Disability Law Center (DLC)

<http://www.dlc-ma.org/>

(617) 723-8455

(800) 872-9992

TTY: (800) 381-0577

DLC is a non-profit organization responsible for providing protection and advocacy for the rights of Massachusetts residents with disabilities. DLC provides information, referral, technical assistance and representation regarding legal rights and services for people with disabilities.

Center for Public Representation (CPR)

<http://www.centerforpublicrep.org/>

(617) 965-0776 (Newton)

(413) 586-6024 (Northampton)

CPR is a public interest law firm, with offices in Newton and Northampton, which provides legal representation to people with mental illness and disabilities in community and institutional settings. CPR has expertise in representing children and adolescents with mental illness.

Prisoners' Legal Services

<http://www.mcls.net/>

(617) 482-2773

(800) 882-1413 (free line for non-prisoners anywhere in Massachusetts)

(617) 482-4124 (prisoners in county facilities may call collect on this number)

***9004# (prisoners in DOC facilities can call on this speed-dial number, which is pre-authorized on all state prisoner PIN cards)**

Prisoners' Legal Services, formerly Massachusetts Correctional Legal Services, is an independent state agency that provides civil legal services to people in Massachusetts prisons and jails including youthful offenders sentenced to prison or jail. The office does not provide criminal defense services. Prisoners' Legal Services is particularly concerned with health care, including mental health care, brutality, extreme conditions of confinement, and segregation.

Civil Liberties Union of Massachusetts (CLUM)

<http://www.aclu-mass.org>

(617) 482-3170

CLUM works on issues of juvenile justice, including efforts to remedy or eliminate school policies that disproportionately exclude students of color from the Massachusetts school system by channeling them into the juvenile justice system. CLUM also works to redress the over-representation of minority youths at every point of the juvenile justice system.

Mental and physical health services

Website on *Rosie D.*, prepared by the Center for Public Representation. Available at <http://www.rosied.org/>.

This website provides information and resources to parents, attorneys, advocates, providers and other professionals regarding ongoing changes to the children's mental health system in Massachusetts as a result of the implementation of the judicial order in the *Rosie D.* class action lawsuit. The *Rosie D.* Order applies to children and adolescents under the age of 21 who reside in Massachusetts and are eligible for MassHealth; are diagnosed with a serious emotional, behavioral or psychiatric condition meeting the federal definitions of serious emotional disturbance; and are determined through a mental health evaluation to need home-based services. The Commonwealth is overseeing implementation through its Children's Behavioral Health Initiative (CBHI). New services became available beginning on June 30, 2009.

Mass. Behavioral Health Partnership (MBHP) web site

<http://www.masspartnership.com>

The Massachusetts Behavioral Health Partnership (MBHP) manages mental health and substance abuse services for more than 350,000 MassHealth members across the Commonwealth. One section of the MBHP web site contains extensive information about the Children's Behavioral Health Initiative (CBHI), which is implementing the *Rosie D.* judgment. This section includes a list of the regional Community Service Agencies that will be key providers of CBHI services at http://www.masspartnership.com/doc/CSAWinnersforPosting03_6_09.pdf.

Mass Health Contact List

http://www.compartners.org/pdf/contact/statewide_contact_list.pdf

A list of state health agencies providing health care, mental health and substance abuse services.

**The Massachusetts League of Community Health Centers
Patient Referral Line**

<http://www.massleague.org/HealthCenters.htm>

(800) 475-8455

A community health center provides physical and mental health services. A center can also provide a social worker to help you locate other resources. Centers assist in applying for medical insurance.

The Emergency Services Programs (ESP) Resource Guide

<http://www.mass.gov/dmh> under DMH Resource Guides

This Department of Mental Health (DMH) guide lists all ESPs statewide, their location, corresponding cities and towns and toll-free crisis numbers.

Boston Medical Center (BMC)

<http://www.bmc.org>

(617) 414-5000

BMC provides health care, including for those without medical insurance.

Boston Emergency Services Team (BEST)

<http://www.northsuffolk.org/services-1.html>

(800) 981-HELP

BEST is an emergency room alternative to people experiencing mental health crises.

Health Care for All Health Care Helpline

<http://www.hcfama.org/>

(800) 272-4232

The Health Care Helpline helps callers who are uninsured or have questions about how to access free or low-cost health care.

JRI Health: Sidney J. Borum Center, Boston

<http://www.jri.org>

(617) 457-8140

The Sidney J. Borum Center specializes in adolescent mental health care, serving ages 13-29. It offers a variety of services including free substance abuse treatment, AIDS testing and a residential school program.

Youth Service Providers Network (YSPN)

<http://www.yspn.org/>

(617) 202-4383

YSPN is a partnership between the Boston Police Department and the Boys & Girls Clubs of Boston serving youths involved with the police and living in Boston. YSPN can provide access to licensed clinical social workers in district police stations who will work with youths to find appropriate social services. Youths referred to the YSPN can receive various forms of assistance from social workers: 1) intake and assessment, 2) short-term case management, and 3) on-going clinical services. To access YSPN services, contact your local Boston Police district station. Youths confined to DYS may be able to continue receiving YSPN services. Parents or guardians who would like these services to continue in DYS settings should talk to their child's YSPN social worker.

Boston Alcohol and Substance Abuse Programs, Inc. (ASAP)

<http://www.bostonasap.com/>

(617) 482-5292

Boston ASAP is an outpatient alcoholism and drug treatment clinic. Ask for an intake worker at the number listed above.

24-hour Massachusetts Substance Abuse Helpline

<http://www.helpline-online.com>

(800) 327-5050

Try the following agencies to find a support group in your area:

Narcotics Anonymous

(617) 426-9444

Alcoholics Anonymous

(617) 426-9444

Al-anon/Alateen Family Groups

<http://www.ma-al-anon-alateen.org>

(508) 366-0556

Al-anon/Alateen Family Groups provide support to family members of people struggling with alcohol addiction.

Additional resources for drug and alcohol rehabilitation can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at <http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Advocacy and support organizations

Citizens for Juvenile Justice (CfJJ)

<http://www.cfjj.org>

(617) 338-1050

CfJJ is an independent, non-profit, public policy advocacy organization working to improve the juvenile justice system in Massachusetts. CfJJ advocates, convenes, conducts research, and educate the public on important juvenile justice issues. CfJJ hosts juvenile justice forums on hot topics and trends in the juvenile justice system that are free and open to the public. CfJJ has information on their web site about the Massachusetts juvenile justice system.

Federation for Children with Special Needs (FCSN)

<http://www.fcsn.org/>

(617) 236-7210

(800) 331-0688

FCSN is a center for parents and parent organizations to work together on behalf of children with special needs and their families. FCSN operates a Parent Training and Information Center which offers a variety of services to parents, parent groups, and others who are concerned with children with special needs.

Parents Engaged in Education Reform (PEER)

<http://www.fcsn.org/peer/home.htm>

PFRR is a project of the Federation for Children with Special Needs whose purpose is to increase the participation of parents of children with disabilities and their organizations in school reform efforts.

Parent Professional Advocacy League (PAL)

<http://ppal.net/>

(617) 542-7860

(866) 815-8122

PAL is the statewide organization of the Federation of Families for Children's Mental Health. PAL provides support, education, and advocacy around issues related to children's mental health. PAL provides educational programs for families. NAMI and PAL also jointly offer Visions for Tomorrow, an 8-10 week course to help parents and primary caregivers of children and adolescents. These programs are offered in English and Spanish.

Massachusetts Advocates for Children (MAC)

<http://www.massadvocates.org>

(617) 357-8431

Massachusetts Advocates for Children, formerly Massachusetts Advocacy Center, is a private non-profit organization advocating for children who face barriers to equal educational and life opportunities. MAC's Children's Law Support Project (CLSP) pursues legal needs of Massachusetts' low income children. MAC accepts calls from families seeking advice, information or representation on concerns related to special education, school exclusions (suspensions or expulsions), the needs of children exposed to family violence, schooling disrupted by homelessness, autism, and MCAS.

Massachusetts Chapter of the National Alliance for the Mentally Ill (NAMI-Mass)

<http://www.namimass.org/>

(781) 938-4048

NAMI is the nation's largest grassroots organization dedicated to improving the lives of individuals and families affected by mental illness. NAMI's support and public education efforts are focused on educating America about mental illness, offering resources to those in need, and insisting that mental illness become a high national priority. NAMI also offers Family-to-Family, a free, 12 week psych-educational course for family members of older adolescents and adults.

The Equity Project

<http://www.equityproject.org/>

The Equity Project is a national initiative to ensure that lesbian, gay, bisexual and transgender (LGBT) youths in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues that impact LGBT youths during the entire delinquency process, ranging from arrest through post-disposition.

National Juvenile Justice Network

<http://www.njjn.org/>

(202) 467-0864 x105

This organization helps statewide juvenile justice coalitions to advocate for fair, equitable and developmentally appropriate adjudication and treatment for all youths and families involved in the juvenile justice system.

National Collaborative on Workforce and Disability for Youth (NCWD/Youth)

<http://www.ncwd-youth.info/>

(877) 871-0744

TTY: (877) 871-0665

The National Collaborative on Workforce and Disability for Youth (NCWD/Youth) assists state and local workforce development systems to better serve all youths, including youths with disabilities and other vulnerable youth. NCWD/Youth offers a range of technical assistance services to state and local workforce investment boards, youth councils and other workforce development system youth programs.

Department of Mental Health Parent Support

<http://www.mass.gov/dmh>

DMH Parent Support is available to all parents of children and adolescents with behavioral, emotional or mental health problems, whether or not their child is a DMH client. DMH funds at least once parent coordinator position in each of its six geographic areas. Parent coordinators facilitate parent support groups that offer emotional support, provide education about mental health problems and treatment, teach advocacy strategies, and teach parents self-help skills.

Massachusetts Families Organizing for Change (MFOFC)

<http://www.mfofc.org/>

A statewide, grassroots coalition of individuals with disabilities and/or chronic illnesses and their families. MFOFC believes that supports for individuals and families can be more flexible and better designed to respond to the actual needs people have. MFOFC provides information, leadership training and support to families, and also has regular regional meetings for families and individuals.

Family TIES of Massachusetts

<http://www.massfamilyties.org>

(781) 774-6736

A statewide information and parent support project of the Massachusetts Department of Public Health (DPH) for families of children with special needs or chronic illness. It is run by parent coordinators in each regional DPH office.

General resources

United Way's First Call for Help 211 (within Massachusetts)

Dialing 211 within Massachusetts connects callers to an Information & Referral Specialist who can provide information on a wide range of immediate needs, including basic subsistence, health care, education, income security, and other programs and services. The specialist will assess the caller's needs and determine the service provider best equipped to handle each situation.

Education resources

Urban PRIDE, Roxbury

<http://www.urbanpride.org/>

(617) 989-3929

Urban PRIDE was founded to empower and support parents of children with disabilities in inner city Boston to improve the lives of children at home, in school and in the community. Urban PRIDE has served over 1500 traditionally underserved families with a variety of different strategies including one-on-one direct support, individual/small group training, consultation activities, parent support groups and collaboration with other child and family provider organizations.

After School Collaboration for Educational Success at the Jamaica Plain Community Center

(617) 635-5244

This program offers interactive and educational tutoring and enrichment for ninth grade students who want to improve their academic level and develop their life skills.

BPS Alternative Education School/Program Profile

<http://www.altedbps.org/programs.htm>

This website offers resources for court-involved youths in the Boston area who are not ready to re-enter traditional public schooling.

Massachusetts Adult Literacy Hotline

<http://sabes.org/hotline/>

(800) 447-8844

The Massachusetts Adult Literacy Hotline provides information on GED and adult education programs.

Moving Ahead – Pathways to Success on the MCAS

<http://www.doe.mass.edu/as/pathways/>

This website features information on a variety of MCAS preparation programs.

TERI College Planning Center

<http://www.tericollegeplanning.org>

(617) 536-0200

The TERI College Planning Center has sites in Boston, Brockton, and Chelsea. Education advisors provide free one-on-one guidance and resources to help young people and adults plan for college and identify sources of financial aid.

The Bottomline, Inc.

<http://www.bottomline.org>

(617) 524-8833

The Bottomline, Inc. has centers in Boston and Worcester. This college access program offers intensive one-on-one services and support to low-income and first-generation-to-college students who are motivated to earn a degree.

Additional resources for education can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at <http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Employment resources

If a youth receives special education services, the youth’s IEP should include vocational training where appropriate. In such a case, see also the above listings under “Education resources.”

Massachusetts School to Career: Local Partnerships, prepared by the Massachusetts Department of Elementary and Secondary Education

<http://www.doe.mass.edu/connect/stc/partners.html>

This web site lists local partnership offices by geographic area. These offices collaborate with businesses, school systems and community organizations to support work-based learning activities for youths.

Massachusetts School to Career: Workforce Investment Boards, prepared by the Massachusetts Department of Elementary and Secondary Education

<http://www.doe.mass.edu/connect/stc/wib.html>

This web site lists workforce investment board offices by geographic area. Workforce investment boards offer students ways to work and learn. One of the roles of the local boards is to appoint a youth council with whom to coordinate youth-related plans and activities.

The Commonwealth’s One-Stop Career Centers, prepared by the Massachusetts Division of Career Services

<http://www.doe.mass.edu/mcas/alt/pathwaycenters.html>

This web site provides a list of One-Stop Career Centers, This list includes the names and contact information for each center’s High School Private Industry Council (PIC) Career Specialist.

The Center for Youth Development and Education (CYDE)

<http://www.cyde.us/>

CYDE provides career development opportunities for youths, particularly high risk youths. CYDE coordinates the youth components of the federal Workforce Investment Act (WIA) in Massachusetts. As part of this role, CYDE provides technical and policy support to workforce investment boards and youth councils.

The Work Place, Boston

<http://www.theworkplace.org>

(617) 737-0093

The Work Place provides a variety of services to young adults who have graduated from high school but not yet passed the MCAS. These include: free community college remediation classes, career counseling, job readiness, and information on alternative education. Services are also available to ex-offenders having trouble finding employment.

ABCD Career Explorations, Boston

<http://www.bostonabcd.org/programs/youth-development/career-explorations/>

(617) 348-6546

ABCD Career Explorations provides year-round job placement and case management services. It offers older and out-of-school youths an opportunity to gain basic skills and explore career options within a particular field.

New England Job Corps

<http://www.jobcorps.gov/contact/boston.aspx>

(617) 788-0186

The Job Corps is a federally-funded jobs program. Job Corps is a no-cost education and vocational training program administered by the U.S. Department of Labor that helps young people ages 16 through 24 get a better job. Students can enroll to learn a trade, earn a high school diploma or GED and get help finding a good job.

YouthBuild, Boston

<http://www.ybboston.org/>

(617) 445-8887

YouthBuild is a national, non-profit organization that helps unemployed and undereducated young people ages 16-24 work toward their GED or high school diploma while learning job skills such as construction, architecture, landscaping, carpentry, entrepreneurship, life skills and professional development that will equip them to support themselves and help develop personal and neighborhood responsibility.

Artists For Humanity, South Boston

<http://www.afhboston.com/>

(617) 268-7620

Artists For Humanity works to help at-risk youths become self-sufficient through paid employment in the arts. The Artists For Humanity EpiCenter is a multi-use facility for youth and the arts in the Fort Point Channel Arts District of Boston.

Additional resources for employment can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at <http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Housing resources

Transition Age Supported Housing (TASH) Program of the Northeast Area of the Massachusetts Department of Mental Health

DMH has developed the pilot TASH for young adults, beginning at age 18, who are receiving DMH services. These young adults are given rental assistance for a period of time, trained in independent living skills and symptom management, and given vocational assistance.

Mass Access: The Accessible Housing Registry

<http://www.massaccesshousingregistry.org/>

The Mass Accessible Housing Registry is a free program that helps people with disabilities find rental housing in Massachusetts, primarily accessible and barrier-free housing. The database tracks accessible and affordable apartments throughout the state, maintaining information about their availability.

Massachusetts Department of Housing and Community Development's Housing Related Resources

<http://www.mass.gov/dhcd/>

Click on Find a Service Provider under the Key Resources section on the lower left side of the page. Provides links to Local Housing Authorities, the Department of Transitional Assistance, Neighborhood Housing Services Offices, Community Development Corporations, Community Action Agencies, Independent Living Centers, Shelter Referral/Placement Services, Temporary Shelters and Homelessness Prevention Agencies.

Local Housing Authorities (LHAs)

<http://www.mass.gov/dhcd/publications/howto.htm#LHAs>

Click on Contact Listings at the bottom of the page and then Local Housing Authority Listing. This web site provides access to the 253 LHAs across the state. These LHAs manage public housing developments, that is, apartments that are built and subsidized by either the state or federal

government. There are approximately 90,000 units of state and federally assisted public housing in Massachusetts.

Additional resources for homeless youths can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at <http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Social organizations

Boys & Girls Clubs of Massachusetts

<http://www.bgca.org/>

The mission of the Boys and Girls Clubs is to inspire and enable young people, especially those from disadvantaged circumstances, to realize their full potential as productive, responsible and caring citizens.

Massachusetts 4-H

<http://www.mass4h.org/>

The Massachusetts 4-H program is focusing its resources in three areas: animal science, communications, community service, science, and leadership.

Massachusetts Young Men's Christian Association (YMCA)

<http://www.ymca.net/>

The mission of the YMCA is to work to build healthy spirits, minds and bodies.

Massachusetts Young Women's Christian Association (YWCA)

<http://www.ywca.org>

The YWCA's mission is to eliminate racism and empower women. The YWCA provides safe places for women and girls and builds strong women leaders.

United Way

<http://www.liveunited.org>

There are several regional United Way organizations within Massachusetts. They offer a range of programs for youths.

Girls Incorporated

<http://www.girlsinc.org>

Formerly Girls Clubs of America, Girls Incorporated helps girls be strong, smart and bold by providing a range of educational programming and leadership training. Some programs are also open to boys.

Jewish Community Centers (JCCs)

<http://www.icca.org/>

JCCs offer a wide range of educational, cultural, social and recreational programs for people of all ages and backgrounds.

Camp Fire USA

<http://www.campfireusa.org/>

Camp Fire USA is a not-for-profit youth development organization. Locations provide all-inclusive, coeducational programs including youth leadership, self-reliance, after school groups, camping and environmental education, and child care.

Computer Clubhouses

<http://www.computerclubhouse.org/>

Computer Clubhouses are after-school learning centers where young people learn about computers and other forms of technology. They are located in communities where children have limited access to technology. Clubhouse volunteers teach computer and problem-solving skills in areas of interest such as web pages, animations and videos, Internet searches, computer games, and computer-generated art and music.

21st Century Learning Centers

<http://www.collaborative.org/>

(413) 586-4900

A project of the Collaborative for Education Services, the centers are multi-service agencies providing after school programs for youths in western Massachusetts.

Boston After School and Beyond

<http://www.afterschoolforall.org/>

(617) 624-8133

Boston After School and Beyond is a public-private effort to provide out-of-school time programs for Boston youths. The web site provides links to after-school resources across Massachusetts.

Youth Options Unlimited (Y.O.U.), Roxbury

<http://www.bostonredevelopmentauthority.org/yoboston/en/>

(617) 541-2600

Youth Options Unlimited provides a broad range of services to court-involved youths from 14 to 24 years of age. The program strives to empower and motivate young people so they may gain the education, employment, and career advancement to be successful in the workplace, in the community, and in their lives.

Whittier Youth Service & Enrichment Program of Whittier Street Health Center (WYSE)

<http://www.wshc.org/>

(617) 989-3032

WYSE is a peer leadership program that provides youths with jobs as community health educators. WYSE is part of a comprehensive support network that offers health services, tutoring, mentoring, and a number of specific programs, that all help to encourage positive youth development. WYSE offers: “On Our Own” (co-ed ages 10-12), “Decisions” (females only ages 14-18), “Young Men of Color” (males only ages 14-18) and “Youth Making A Difference” (co-ed, ages 14-18).

Caribbean U-Turn

<http://caribbeanuturn.org/>

(617) 296-6789

U-Turn is a faith based, non-denominational ministry reaching out to young at-risk Caribbeans of Greater Boston. Working with the Boston Youth Strike Force, the Court, Probation Officers, the MBTA, and the Boston School Police, U-Turn identifies youths of Caribbean descent who appear to be at-risk. The project provides a six-month peer leadership training, therapeutic services, and mentoring, after school services, homework supervision and a drop-in center for youth.

Youth and Police in Partnership (YPP) Program of Children’s Services of Roxbury

<http://www.csrox.org/ypp.html>

(617) 989-9463

YPP, run with the Boston Police Department, works to improve the relationship between inner-city youths, community residents and the BPD. The program serves to educate youths and provide resources and skills. The program offers Roundtable Discussions between youths, police, and community; speaker presentations regarding youth violence prevention; community safety, and youth violence prevention and community safety best practices models.

Additional resources for social organizations can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at

<http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Crime and violence prevention

Massachusetts Department of Public Health Violence Intervention Services

<http://www.mass.gov/dph/violence>

This website has links to violence prevention programs run by the Department of Public Health's Division of Violence and Injury Prevention.

Boston Center for Youth and Families Streetworkers Program (617) 635-4920

Boston TenPoint Coalition (BTPC)

<http://bostontenpoint.org/>

(617) 524-4331

BTPC is an ecumenical group of Christian clergy and lay leaders working to mobilize the Christian community around issues affecting Black and Latino youth. Their Crisis Intervention Services program offers coordinated support to neighborhoods and community to break the cycle of violence and minimize the inflammatory effect of violent crimes.

CORI record request

Employers are allowed or sometimes required to perform a CORI check before hiring someone. Youths can request CORI records at http://www.state.ma.us/chsb/cori/cori_forms.html.

Mentoring organizations

Big Brothers Big Sisters

<http://www.bbbs.org/>

Big Brothers Big Sisters matches caring, responsible adults with children.

Best Buddies Massachusetts

<http://www.bestbuddiesma.org>

(617) 778-0522

(866) 33-BUDDY (toll free)

Best Buddies provides opportunities for one-to-one friendships and employment for people with and without mental retardation.

Scouts New England

<http://sne.tripod.com/ma.htm>

This website lists Massachusetts Scouting Information.

Additional resources for mentoring can be found in the Boston Youth Survival Guide 2008-2009, which you can link to at <http://www.hryn.org/Research%20and%20Needs%20Assessment>.

Civic engagement

The Center for Teen Empowerment

<http://www.teenempowerment.org/>

(617) 536-4266

The Center for Teen Empowerment, Inc. (TE) inspires young people, and the adults who work with them, to think deeply about the most difficult social problems in their schools and communities, and gives them the tools they need to work with others in creating significant positive change. TE has a long history of collaborating with the Boston Public Schools and has sites in Boston and Somerville. See the web site at <http://www.teenempowerment.org/programs/> for a list of sites.

Massachusetts YMCA Youth and Government program

<http://www.maymcayag.org>

(617) 720-2810

The Youth and Government program teaches teens in grades 9-12 how they can participate in the democratic process.

Multicultural Youth Tour of What's Now (MYTOWN), Boston

<http://www.mytowninc.org>

(617) 536-8696

MYTOWN is a non-profit organization that uses history as a youth development and community building strategy. By discussing the accomplishments of local change-makers, MYTOWN demonstrates the need for young people to assume community leadership and ownership.

Roxbury Environmental Empowerment Project of Alternatives for Community and Environment

<http://www.ace-ej.org/>

(617) 442-3343

The project develops environmental justice leadership among youths in the Roxbury area through an environmental justice curriculum, internship program, and youth-led projects.

Critical Breakdown, Boston

<http://www.criticalbreakdown.org/>

A project of the American Friends Service Committee, Critical Breakdown is a hip-hop activist program that encourages youths to use creativity to

explore solutions to poverty, oppression and injustice.

Youth Empowerment Project of Boston Mobilization, Cambridge

<http://www.bostonmobilization.org/>

(617) 492-5599

The project runs workshops in the Greater Boston area in both high schools and middle schools. Their curriculum includes anti-racism work.

Project HIP-HOP (Highways Into the Past - History, Organizing & Power), Boston

<http://www.projecthiphop.org/>

(617) 427-7950

This is a youth-led organization using hip hop culture and the history of resistance to injustice as tools for engaging and developing young people as activists and organizers. Project HIP-HOP is particularly interested in building the skills of young people who are often labeled “at-risk.

Freedom House, Dorchester

<http://www.freedomhouse.com>

(617) 445-3700

Freedom House is a nonprofit, community-based organization working in Boston’s communities of color. They have projects focused on education and leadership development.

Reflect and Strengthen, Dorchester

<http://www.Reflectandstrengthen.org>

(617) 445-2355

Reflect and Strengthen is an organization for girls and women ages 13-30 from the working-class, urban communities of Boston. The organization seeks positive social change through creative expression, political education and community building.

Zumix, East Boston

<http://www.zumix.org>

(617) 568-9777

Zumix seeks to empower youths through music to make positive change in their lives, communities and the world.

Sexuality resources

Fenway Community Health Center Helpline

(617) 267-9001 or (888) 340-4528

<http://www.fenwayhealth.org>

Fenway Community Health Center Peer Listening Line

(617) 267-2535 or (800) 399-7337

<http://www.fenwayhealth.org>

Fenway Community Health Center's Gay, Lesbian, Bisexual and Transgender Helpline and Peer Listening Line offer free, confidential information, advice and referrals for a range of issues in a safe, non-judgmental space.

BAGLY – GLBT Network of Massachusetts

<http://www.bagly.org/network>

BAGLY is a peer-run, adult-supported organization that provides a variety of services and support for LGBTQ youths, especially minority youths. Services and activities include youth-led harm reduction, support groups, and leadership and activism development sessions. BAGLY's website lists LGBTQ resource centers across the state.

Spiritual engagement

The Center for Spiritual Development in Childhood and Adolescence

<http://spiritualdevelopmentcenter.org/>

(612) 399-0235

The Center is a global initiative to advance the research and practice of this domain of human development.

Search Institute

<http://www.search-institute.org/>

(612) 376-8955 or (800) 888-7828

Search Institute is an independent nonprofit organization whose mission is to provide leadership, knowledge, and resources to promote healthy children, youths, and communities. In particular, see the pages entitled "Faith Communities" and "Spiritual Development."

Web-based resource lists

Mass Resources

<http://www.massresources.org>

A statewide list of resources including a youth activities directory.

Boston Resource Net

<http://www.bostonresourcenet.org>

A searchable list of organizations and agencies in Eastern Massachusetts that provide human services, including services to youths.

Boston Youth Service Providers Collaboration and the Alternative Education Alliance

<http://www.bostonyouthservices.net/>

Members of the Boston Youth Service Providers Collaboration and the Alternative Education Alliance work cooperatively to provide integrated, year-round services to Boston youth.

Provides links to member organizations.

Project INTERFACE

<http://www.projectinterface.org/>

(617) 332-3666 ext. 411

Project INTERFACE has collected and categorized on the web a wide range of resources about children's mental health and related topics for the benefit of parents, educators and mental health professionals in the communities it serves which include Boston, Newton, Waltham and Wellesley.

Publications

General issues

“DYS Regional Community Resource Guides” by the Commonwealth Corporation and the Massachusetts Department of Youth

Services. Available at <http://www.commcorp.org/resources/grid.cfm?ID=35&view=all>.

The guides were developed by Commonwealth Corporation in collaboration with the Massachusetts Department of Youth Services and created for the five DYS regions: Southeast, Metro, Northeast, Central and West. The Guides contains education resources, including alternative and non-traditional high school programs and GED programs, employability resources, including Career Centers, job search and training resources, and social services supports.

“Community Notebooks,” by the Youth Advocacy Department (YAD).

Available at <http://www.youthadvocacydepartment.org/outreach/outreach-communitynotebooks.html> and at (617) 445-5640.

YAD has produced notebooks featuring specific programs and services in the Boston area on the following topics: Girls Edition, Out-of-School Time, Health and Counseling, Education, Worcester GED/Job Readiness Resource Guide, Worcester After-school Program Guides, and Worcester Summer Program Guide.

“From a Parent’s Perspective,” written by Linda Smelstor and published by Citizens for Juvenile Justice (2000). Available at <http://www.cfjj.org/Pdf/Handbook2.pdf>.

This guide deals with the rights of parents of committed youths.

“The Handbook on the Legal Rights of Minors,” by the Mental Health Legal Advisors Committee (2001)

This handbook covers multiple topics, with an emphasis on the rights of youths with mental health issues. Some chapters have been updated and are available at <http://www.mhlac.org/>. Contact (617) 338-2345 for more information.

Criminal law

“Kids and the Law: A User’s Guide to the Court System,” by Rebecca Pries and Carol Rosensweig (3rd ed. 2002). Available for purchase from Adolescent Consultation Services, Inc. at (617) 494-0135 or <http://www.kidsandthelaw.org/>.

This English-Spanish book guides families of court-involved youths through the Massachusetts juvenile court system. Also available in Khmer-English.

Various pamphlets, by the Youth Advocacy Department. Available at <http://www.youthadvocacydepartment.org>. This website posts pamphlets for youths and for parents that deal with the arrest and later court appearances.

Education

“Community Notebook, Education Edition,” by the Youth Advocacy Department (2010). Available at <http://www.youthadvocacydepartment.org/outreach/outreach-communitynotebooks.html> and at (617) 445-5640.

The Education Edition of the Community Notebook is intended as a primer to the educational system in Massachusetts. A listing of advocacy resources and helpful websites is also included.

“Helping Traumatized Children Learn,” by Massachusetts Advocates for Children (MAC) (2005). Available at <http://www.massadvocates.org>.

“Children Affected by Domestic Violence or Homelessness: Helping Children Stay Safe and Succeed in School,” by Massachusetts Advocates for Children (MAC) (2005). Available at <http://www.massadvocates.org/home>.

“Student Records in Massachusetts,” by the Children’s Law Center of Massachusetts. Available at http://www.clcm.org/community_education.htm.

“School Suspension and Expulsion,” by the Children’s Law Center of Massachusetts. Available at http://www.clcm.org/community_education.htm.

“Supplemental Educational Services,” by the Department of Elementary and Secondary Education. Available at <http://www.doe.mass.edu/nclb/parents.html?section=ses>. Schools receiving federal Title I funding must offer supplemental educational services to eligible children if the school is in its second year of Needs Improvement status. Student eligibility is based on family income level and youth academic achievement level. This web site provides more information about obtaining these services.

“MCAS Performance Appeals,” by the Department of Elementary and Secondary Education. Available at <http://www.doe.mass.edu/mcasappeals/filing/guidelines.html>.

This web site describes the appeal process for a student who has repeatedly failed the grade 10 MCAS tests (score less than 220). A student who can demonstrate knowledge and skills in the subject area can appeal a failed test.

“A Family Guide to Getting Involved with Correctional Education,” by T. Osher & B. Huff for the National Evaluation Technical Assistance Center for the Education of Children Who Are Neglected, Delinquent or At Risk (2008). Available at <http://www.neglected-delinquent.org>.

“In School, The Right School, Finish School: A Guide to Improving Educational Opportunities for Court-Involved Youth,” by the National Children’s Law Network (2005). Available at http://www.illinoisprobono.org/index.cfm?fuseaction=home.dsp_content&contentID=4400.

Special education

“A Parent’s Guide to Special Education,” by the Federation of Children with Special Needs and the Department of Elementary and Secondary Education. Available at <http://www.fcsn.org/parentguide/pgintro.html>.

Parent’s Notice of Procedural Safeguards,” by the Department of Elementary and Secondary Education (2010). Available at <http://www.doe.mass.edu/sped/prb/>.

“IEP Process Guide,” by the Department of Elementary and Secondary Education (2001). Available at <http://www.doe.mass.edu/sped/iep/>.

“Is Special Education the Right Service: A Technical Assistance Guide,” by the Department of Elementary and Secondary Education (2001). Available at <http://www.doe.mass.edu/sped/iep/>.

List of Massachusetts Approved Private Special Education Schools, by the Department of Elementary and Secondary Education. Available at <http://www.doe.mass.edu/pqa/spedpvtlist/>.

This web site provides a list of approved Massachusetts in-state day and residential private special education school programs. Eligibility of special education students for day and residential school placements is dependent upon a decision of the educational TEAM that such a placement is required and subsequent documentation of that decision in the student’s Individualized Educational Plan.

“Directory of Member Schools,” by the Massachusetts Association of 766 Approved Private Schools (MAAPS). Available at <http://www.spedschools.com> or by contacting MAAPS at (781) 245-1220.

New England Residential School Directory, by New England Psychologist. Available at <http://www.masspsy.com/residential/index.html>.

This web site provides a list of residential schools in New England.

“Special Education in Massachusetts,” by the Children’s Law Center of Massachusetts. Available at http://www.clcm.org/community_education.htm.

Housing

Finding Public and Subsidized Housing, by Mass. Law Reform Institute (2009). Available at <http://www.masslegalhelp.org/housing/finding-housing-booklets>.

This handbook provides information about the nuts and bolts of government-funded housing programs in Massachusetts.

How to Obtain Housing Assistance in Massachusetts, by the Massachusetts Department of Housing and Community Development (2004). Available at <http://www.mass.gov/dhcd> under “Key Resources.”

This publication details how to obtain housing assistance.

Insurance

MassHealth Advocacy Guide: An Advocate’s Guide to the Massachusetts Medicaid Program (2009 with 2010 update), by Vicky Pulos, Mass. Law Reform Institute. Available at <http://www.masslegalservices.org/MassHealthAdvocacyGuide>.

This publication includes an overview of the MassHealth program, eligibility criteria, covered services, premiums, and appeal rights.

Mental health and substance abuse services

“A Guide for Staff Who Work with Children and Families,” by the Children’s Behavioral Health Initiative (2010). Available at <http://www.mass.gov/Eeohhs2/docs/masshealth/cbhi/cbhi-guide.pdf>. A guide for accessing MassHealth home and community-based behavioral health services for youth under age 21.

“The Parents’ How-to Guide to Children’s Mental Health Services in Massachusetts (2nd ed.),” by the Boston Bar Association and others (2009). Available at http://www.bostonbar.org/theguide/bba_theguide_jan2009.pdf or by contacting the Boston Bar Association at (617) 742-0615. This booklet describes how to access appropriate resources for youths with mental health needs.

“Community Notebook, Health and Counseling Edition,” by the Youth Advocacy Department (YAD) (2008). Available at <http://www.youthadvocacydepartment.org/outreach/outreach-communitynotebooks.html> and at (617) 445-5640.

The Health and Counseling edition of the Community Notebook focuses on young people’s health as an important factor in their overall development into successful members of their communities.

“Making Sense: A Parent’s Guide to Mental Health Resources,” by the Boston Public Health Commission. Available at <http://www.talklisten.org/>.

This guide provides good explanations of groups, therapies, and emergency/intensive mental health services and how to access them.

“Making Sense: A Parent’s Guide to a Child’s Psychiatric Hospitalization,” by the Boston Public Health Commission. Available to order or download at <http://www.talklisten.org/>.

“Psychopharmacology for Children and Adolescents: An Overview,” by Robert D. Fleischner, Center for Public Representation (2001).

Available at <http://www.centerforpublicrep.org> under “Juvenile Justice” section of “Litigation and Consulting Services.”

Resource List by the Foundation for Children with Behavioral Challenges. <http://www.explosivekids.org/resources/links.html>

This site lists web sites on topics related to raising a behaviorally challenging child, including links on helping such a child at school.

Massachusetts Youth & Young Adult Substance Abuse Services Directory by the Department of Public Health (2011). Available at http://www.yac-yac.info/uploads/1_MA_Youth_YA_SA_Services_Directory_ELECTRONIC_VERSION.pdf.

Federal and state laws and regulations

Individuals with Disabilities Education Act (IDEA): 20 U.S.C. 1400
<http://www.gpoaccess.gov/uscode/>

Federal regulations implementing IDEA: 34 C.F.R. 300
http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr300_02.html

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
<http://www.gpoaccess.gov/uscode/>

Massachusetts statute relating to Department of Youth Services: Mass. Gen. L. ch. 18A
<http://www.mass.gov/legis/laws/mgl/gl-18a-toc.htm>

Massachusetts statute relating to Protection and Care of Children, and Proceedings Against Them: Mass. Gen. L. ch. 119
(Juvenile Delinquency Code can be found at Mass. Gen. L. ch. 119, §§ 52-84.)
<http://www.mass.gov/legis/laws/mgl/gl-119-toc.htm>

Massachusetts statute guiding DYS in treating and rehabilitating committed juveniles: Mass. Gen. L. ch. 120
<http://www.mass.gov/legis/laws/mgl/gl-120-toc.htm>

Massachusetts Department of Youth Services regulations: 109 CMR (not currently on web but available for purchase from State Bookstore Catalog at <http://www.sec.state.ma.us/spr/sprcat/agencies/109.htm>)

Massachusetts special education statute: Mass. Gen. L. ch. 71B
<http://www.mass.gov/legis/laws/mgl/gl-71b-toc.htm>

Massachusetts Department of Elementary and Secondary Education (DESE) special education regulations: 603 CMR 28.00

<http://www.doe.mass.edu/lawsregs/603cmr28.html>

Massachusetts mental health statute: Mass. Gen. L. ch. 123

<http://www.mass.gov/legis/laws/mgl/gl-123-toc.htm>

Massachusetts Department of Mental Health (DMH) inpatient regulations: 104 CMR 27.00

http://www.mass.gov/Eeohhs2/docs/dmh/regs/reg_104cmr27.pdf

Massachusetts Department of Early Education and Care (DEEC) regulations for the licensure or approval of residential programs serving children: 102 CMR 3.00

http://www.eec.state.ma.us/docs/residential_regs.pdf

APPENDIX A

TABLE OF SELECTED LEGAL PROVISIONS DISCUSSED IN THIS BOOK¹

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Accessing DYS records		109 CMR 3.00 <i>et seq.</i>	DYS Policy # 1.7.2, Confidentiality of Client Records (Feb. 15, 1999)	Not applicable	
Program case management/ service planning				Yes	See DYS treatment plans and progress reports policies
Treatment plans			DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999)		See DEEC program case management/ service planning regulations
Treatment team meetings			DYS Policy # 2.2.1(b), Treatment Plans (Jan. 1, 1999); DYS Policy # 2.2.4 Progress Reports (Jan. 1, 1999)		See DEEC program case management/ service planning regulations

¹ This table does not indicate which provisions apply in a certain program. When using this table, you must first determine which provisions apply. This determination will require examining the provision to see to which programs it applies. You may want to contact one of the organizations that provides legal representation listed in the Resource Guide.

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Room confinement		109 CMR 5.00 <i>et seq.</i> ²			See DEEC time out regulations
Time out				102 CMR 3.07(7)(k) ²	See DYS room confinement regulations
Prohibition on corporal punishment			DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999)	102 CMR 3.07(7)(g)	
Restraint in facilities		109 CMR 6.00 <i>et seq.</i>	DYS Policy # 3.2.8(d), Restraints and Use of Force (Apr. 10, 2000)	102 CMR 3.07(7)(j)	DYS and DEEC provisions largely overlap, although each agency has some unique requirements (see separate table regarding restraint)
Mechanical restraint during transport			DYS Policy # 2.1.2(b), Transportation (Jan. 1, 1999)		

² Room confinement is placing a youth in a room from which he cannot leave and may only be used to control seriously disruptive or dangerous behavior. Confined youth must be visually observed at least every 15 minutes.

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Searches during transport			DYS Policy # 2.1.3, Security and Safety Procedures for Transportation (June 1, 1999)		
Visits			DYS Policy # 3.4.4(b), Visitation (Jan. 1, 1999)	102 CMR 3.07(9)	
Telephone			DYS Policy # 3.4.3(b), Telephone Use (Jan. 1, 1999)	102 CMR 3.07(9)	
Mail			DYS Policy # 3.4.2(b), Mail (Jan. 1, 1999)	102 CMR 3.07(9)	
Special management			DYS Policy # 2.2.2(b), Special Management (Jan. 1, 1999) ³		See DEEC behavior management regulation
Behavior management				102 CMR 3.07(7) ⁴	See DYS special management and behavior modification policies

³ A special management plan is a form of treatment plan for youth with serious behavioral problems.

⁴ Special management includes any use of a level/point system, restrictions, physical restraint, behavioral interventions used as alternatives to restraint, separating a resident from a group or activity, or denial/restrictions of on-groups program services.

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Behavior modification			DYS Policy # 2.3.1(b), Behavior Modification (Jan. 1, 1999) ⁵		See DEEC behavior management regulation
Passes to the community			DYS Policy # 3.2.25, Passes (June 1, 1999)		
Program advocate			DYS Policy # 2.2.3(b), Advocate System (Jan. 1, 1999)		
Staff interaction with youth			DYS Policy # 2.3.2, Client and Staff Interaction (Feb. 15, 1999)		
Language			DYS Policy # 3.4.6(b), Foreign Languages in Facilities (Jan. 1, 1999)		

⁵ A behavior modification system assesses a youth's behavioral progress, reinforces good behaviors, and provides negative consequences for rule violations and anti-social behaviors and attitudes.

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Religious services/ practice			DYS Policy # 3.4.8(b), Religious Services (Jan. 1, 1999)	102 CMR 3.06(8)	
Searches in facilities and programs			DYS Policy # 3.1.2(a), Searches in Secure Facilities (June 1, 2006); DYS Policy # 3.1.3(a), Searches in Residential Facilities (June 1, 2006); DYS Policy # 3.1.4(a), Searches in Community Programs (June 1, 2006)	102 CMR 3.07(11)	
Personal property			DYS Policy # 3.5.5, Storage and Disposal of Personal Property and Funds (June 1, 1999)		
Complaint process				102 CMR 3.04(3)(j)	DYS has no complaint provision but complaints may be filed with DHS legal department. See also DHS program advocate policy.

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Incident reporting	Mass. Gen. L. ch. 119, § 51A		DYS Policy # 1.3.5(d) Serious Incident Reporting and Investigation	102 CMR 3.04(3)(h)	Various DYS policies have provisions for reporting certain types of incidents.
Grooming and hygiene				102 CMR 3.07(5)(a)	
Clothing				102 CMR 3.07(4)	
Recreation				102 CMR 3.06(7)	
Intake screening			DYS Policy # 2.1.1(c), Intake Procedures (Jan. 1, 1999)		
Mental health assessment	Mass. Gen. L. ch. 120, § 5(a)-(c) (committed youth)	109 CMR 11.22; 109 CMR 11.23	DYS Policy # 2.2.5(c), Suicide Assessment in Secure Facilities (June 1, 2006), DYS Policy # 2.2.6(a) Suicide Assessment in Residential Facilities (Nov. 1, 2005), and DYS Policy # 2.2.7(a) Suicide Assessment at Community Placements (Nov. 1, 2005)	102 CMR 3.05	

Legal Right	Mass. statute	DYS regulation	DYS policy	DEEC regulation	Comments
Mental health treatment	Mass Gen. L. ch. 18A, § 2			102 CMR 3.06	
Medical care	Mass. Gen. L. ch. 18A, § 2	109 CMR 11.23(1)(a)	DYS Policy # 2.5.7, Continuity of Care (Mar. 14, 2000)	102 CMR 3.06(4)	
Use and/or administration of medication/ psychotropic medication	Mass. Gen. L. ch. 18A, § 2	109 CMR 11.01, 11.14, 11.15, 11.16	DYS Policy # 2.5.16(b), Use of Psychotropic Medication (Mar. 14, 2000); DYS Policy # 2.5.15(b), Medication Administration (Jan. 1, 1999)	102 CMR 3.06(4)(k)	
Drug/alcohol testing			DYS Policy # 2.3.6, Client Substance Use (Sept. 18, 2000)		

APPENDIX B

COMPARISON OF DYS RESTRAINT POLICY AND DEEC RESTRAINT REGULATIONS¹

Right regarding restraint	DYS restraint policy	DEEC regulations
Only used when danger is present	Y	Y
Need to conclude no alternatives to restraint exist	Y	
Lists what staff must try before restraint	Y	
Not as punishment or for convenience	Y	Y
Lists prohibited measures	Y	Y
Continuously monitor	Y	Y
Release if distress	Y	
Release if safe	Y	Y
Steps if more than 5 times in week	Y	Y
Start with takedown and release if can	Y	
Steps after that, including handcuffs	Y	

¹ This table does not indicate which provisions apply in a certain program. General guidance on that topic follows:

- The **full DYS restraint policy** applies to: youths in DYS run programs (whether staffed by state or vendor employees); and youths in vendor-run programs who have adopted the whole DYS restraint policy.
- The **provisions of the DYS restraint policy having to do with documentation** of restraint (the log and monthly reports, the documentation of each restraint and the filing of an incident report for violations of mechanical restraint) apply to all programs, including vendor-run programs.
- **DEEC restraint regulations** apply to DYS secure detention facilities and secure treatment programs run by providers or DYS.)

When using this table, first confirm which provisions apply in the particular program. You may want to contact one of the organizations that provides legal representation listed in the Resource Guide in Chapter 23.

Right regarding restraint	DYS restraint policy	DEEC regulations
No ties to fixed objects	Y	
For more than 1 hour, call DYS administrator	Y	
Operation log and monthly reports	Y	
Document each restraint	Y	Y
Staff complete incident report on all violations of mechanical restraint	Y	
Only staff trained in restraint may do	Y	Y
Call staff after first 5 minutes		Y
Type of restraint used is dictated	Y type used is dictated by policy for consistent, safe application throughout DYS system	Y least intrusive form of restraint must be used
If longer than 20 minutes, staff must obtain approval		Y

APPENDIX C

CHECKLISTS FOR FAMILIES

CHECKLIST OF STEPS TO TAKE AFTER THE ARREST	C.2
CHECKLIST OF STEPS TO TAKE DURING TRIAL, ADJUDICATION, AND DISPOSITION.....	C.4
CHECKLIST OF STEPS TO TAKE UPON COMMITMENT AND DURING ASSESSMENT.....	C.7
CHECKLIST OF STEPS TO TAKE REGARDING THE STAFFING AND CLASSIFICATION MEETINGS	C.10
CHECKLIST OF STEPS TO TAKE BEFORE TRANSITIONING BACK TO THE COMMUNITY.....	C.12
CHECKLIST OF STEPS TO TAKE BEFORE SIGNING A GRANT OF CONDITIONAL LIBERTY	C.15
CHECKLIST OF STEPS TO TAKE IN RESPONSE TO A POTENTIAL REVOCATION OF A GRANT OF CONDITIONAL LIBERTY	C.16

CHECKLIST OF STEPS TO TAKE AFTER THE ARREST

- A youth may only be held in a police holding cell for up to six hours. Arrested youths must be held separately from adults.
- If the police do not immediately release the youth home and the youth is being held at a police station or in pre-arraignment detention (an Alternative Lockup Program (ALP)), the youth is entitled to have a bail commissioner set bail. (A bail commissioner is the state-appointed person who may set the amount of bail for a youth detained at a police station prior to arraignment in court, and who recommends to the court the amount of bail that should be set for the youth on each criminal case.) If the probation officer recommends that the youth be held, this recommendation is supposed to be forwarded to the bail commissioner. The bail commissioner then should hold a hearing at the police station or in pre-arraignment detention. If your child is not getting released from the police station or an ALP, parents should insist that the police call a bail commissioner.
- If your child is being held in a police station or in pre-arraignment detention (an ALP), inform those running the facility of his medical needs and medications. You also can ask what resources are available to staff for your child (such as medical staff on call) and how the facility can best meet your child's medication needs.
- If the family cannot afford to hire a lawyer for the youth, the court will appoint a lawyer at the arraignment to handle the case. If you plan to hire a lawyer for your child, try to hire one right away, even before the arraignment.
- It is essential to your child's interests that you attend the arraignment and bail hearing. The court will require the youth's parent or legal guardian to appear in court for this hearing and future proceedings.
- When speaking with probation, remember that information provided is not confidential. You may choose to decline to answer questions. If you do answer, you should answer truthfully.
- Even if your child needs services, it is better to help your child

access them in the community, rather than through the courts. So, if you can avoid having your child held in a detention facility, you should. Talk to your child's lawyer about your child's strengths and explain why your child should be able to come home with you.

- If your child is detained, encourage him to behave well in that setting. Urge him to participate in school and stay out of fights. This information will be provided to the court.
- Investigate any proposal to divert your child from the juvenile justice system carefully before agreeing to participate.
- Do not discuss your child's mental health problems with anyone else in the court proceeding (such as the probation officer or judge) without first talking about these problems with your child's lawyer.
- When speaking with an evaluator, parents should answer truthfully. However, parents are not obligated to respond to questions and can choose not to answer a question or questions.

CHECKLIST OF STEPS TO TAKE DURING TRIAL, ADJUDICATION, AND DISPOSITION

Helping your child's lawyer prepare for trial

- Provide information to your child's defense lawyer so that the lawyer may prepare. Give the lawyer contact information for and information from individuals who have worked with your child, such as a school counselor, pastor or minister, pediatrician, or therapist.
- If you think a psychological or psychiatric evaluation of your child would be worthwhile, talk to your child's lawyer about this issue as well.
- Ask your child's lawyer to evaluate the availability and appropriateness of a disposition (the final outcome of a case in the juvenile justice system) that allows for your child to receive community-based behavioral health services.
- Discuss with your child's lawyer, while preparing the case, the effect of the outcome on your child's juvenile record.
- Discuss with your child's lawyer the possible options of going to trial or accepting a plea bargain.
- Plan to attend the trial to support your child.

During the sentencing/disposition phase

- Provide information to your child's defense lawyer so that the lawyer may prepare for the disposition phase (the phase in which the final outcome of the case is determined). In this phase, your child's lawyer will seek to provide the court with a full picture of your child and his needs.
- If you haven't already done so, give the lawyer contact information for and information from individuals who have worked closely with your child, such as a school counselor, pastor or minister, pediatrician, or therapist.
- For youths with mental health or substance abuse treatment needs, the sentencing phase is critical. It is a key point at which a youth

can try to access appropriate mental health and substance abuse services. Talk to your child’s lawyer if you believe that your child needs such services.

- If you think it would be worthwhile for your child to undergo a psychological or psychiatric evaluation in order to help the judge decide the disposition, talk to your child’s lawyer about this issue. This evaluation is known as a “15(e)” evaluation, from Mass. Gen. Laws, ch. 123, § 15(e).
- Ask your child’s lawyer to evaluate the availability and appropriateness of a disposition or outcome that allows for the implementation of community-based behavioral health services. There is growing consensus among mental health clinicians that clinical services that wrap around the youth are more effective than facility-based treatment in addressing mental health problems and rehabilitating youths. In Massachusetts, Medicaid-eligible youths with Serious Emotional Disturbance can now access a range of community-based services.

If your child is being placed on probation

- Participate in the interview being conducted by the probation officer. The report that the officer produces as a result of this interview includes a detailed profile of the youth, including a risk/need classification, that is then used to develop supervision plans.
- Examine the proposed conditions of probation. If any of the proposed conditions would be difficult to satisfy, tell your child’s lawyer since a violation of probation conditions is a frequent cause of commitment to DYS. For example, if a proposed condition is regular school attendance and your child has a history of truancy, it is important to tell the lawyer so that that condition can be modified or other conditions can be substituted for it.
- If your child’s probation officer thinks your child has broken a rule, the officer will send him a letter called a “surrender notice” requiring him to come to court for a hearing. When the youth arrives at court, he will be appointed a lawyer. If your child liked his original lawyer and wants him or her reappointed for this hearing, he should: 1) let the original lawyer know about the surrender notice and the hearing date; and 2) ask the judge to have the same lawyer reappointed -- citing trust, communication, and knowledge of the child’s unique circumstances.

CHECKLIST OF STEPS TO TAKE UPON COMMITMENT AND DURING ASSESSMENT

- Upon commitment to DYS, the youth's parent or legal guardian maintains legal custody over the youth (unless a parent cannot be found and no legal guardian has been appointed). Be as involved with your child's situation as possible. The more parental involvement during commitment (and particularly during the assessment phase), the better your child is likely to do.
- Once a youth is committed to DYS custody, he will travel to a DYS facility in a sheriff's van and placed on an assessment unit.
- Within 24 hours of your child's arrival on the assessment unit, DYS does a preliminary clinical assessment, including a suicide screen.
- Within two business days of commitment, DYS should assign your child a DYS caseworker who will coordinate an assessment of your child's needs. Be sure to participate in the assessment process, described below.
- Encourage your child to behave well on the assessment unit and to participate in the assessment process. Encourage your child to make the best of an unfortunate situation.
- The DYS caseworker contributes to a "Case History," a document with multiple sections on various aspects of your child's history. These sections include family involvement, educational history, prior juvenile record, presence or absence of substance abuse, medical and psychiatric history, and review of risk factors related to offending. As part of this process, the caseworker administers a Youth Level of Service/Case Management Inventory (YLS/CMI) assessment to assess risks and needs.
- Also as part of the assessment, the clinician on the unit where your child is being held will administer the Child and Adolescent Needs and Strengths (CANS) assessment (to measure needs and assist in developing a service delivery plan) and one or more substance abuse assessment tools, to determine whether your child needs substance abuse treatment. The results of these assessments are included in the Case History.
- DYS has 30 days to complete the full assessment. Since time spent on an assessment unit does not count toward treatment time and

services in the assessment unit are more limited than on treatment units, parents should carefully monitor the assessment process and get involved if it appears that delays are occurring. Before the end of the 30 days, check in with your child's caseworker to discuss how the assessment process is progressing. If 30 days have already passed, advocate for your child to finish the assessment process and leave the unit.

- As part of the assessment, DYS should interview a youth's parents or legal guardian. Be truthful in your answers, but think carefully before disclosing certain information. For example, inform DYS about developmental delays, mental health hospitalizations, diagnoses, medication, and cognitive/learning issues. However, before you discuss with DYS an issue that could expose your child to criminal liability, talk to your child's lawyer. Similarly, consult with your child's lawyer before telling DYS about any history of your child acting out sexually. Parents are not obligated to respond to questions posed by evaluators and can choose to not answer a question or questions.
- Work with the youth's lawyer during the assessment phase to make sure DYS receives copies of the youth's school records, mental and physical health records, and any other information that would be useful to determine the youth's needs. Keep a copy of the records that you provide to DYS. You may want to reference them during your child's commitment or provide additional copies to DYS or program staff.
- If your child's lawyer arranged for a clinical evaluation during the course of representation, discuss with the lawyer whether that evaluation should be shared with DYS. (If a court clinic evaluation has been conducted, the court will provide the clinical portions of the report to DYS after DYS commitment for use in assessment and planning.)
- If your child receives special education services, inform DYS during the assessment process. Provide DYS with copies of your child's Individualized Education Program (IEP). If your child has an IEP, he has the right to receive special education services as outlined in his IEP while in DYS custody. Work with DYS to ensure that the whole IEP is implemented.
- Request a copy of your child's DYS Case History so that you may verify its accuracy and understand the DYS assessment of your child. A parent, legal guardian or attorney has the right to receive

a copy of this document (and any other document contained in a youth's DYS records) by making an oral or written request. If you make the request orally, be prepared to present proper identification. If you make the request in writing, keep a copy of your request.

CHECKLIST OF STEPS TO TAKE REGARDING THE STAFFING AND CLASSIFICATION MEETINGS

The staffing meeting is a meeting of DYS staff and, potentially, the youth, the youth's lawyer, a parent/legal guardian and the parent/legal guardian's personal representative. The purpose of the meeting is to recommend a range of time which a committed youth should spend in secure and residential treatment facilities and identify potential placement locations.

The classification meeting is a meeting of DYS administrators (known as the DYS Regional Review Team) and, potentially, the youth's lawyer, a parent/legal guardian and the parent/legal guardian's personal representative. The purpose of the meeting is to review the recommendation made by those who attended the staffing meeting and to determine both the range of time which a committed youth will spend in secure and residential treatment facilities and the placement location itself.

Before the staffing meeting

- Once a youth is sent to an assessment unit and a DYS caseworker is assigned to your child, send a letter to the caseworker indicating that you plan to attend the staffing meeting and that you would like to receive notice of the date and place of the meeting.
- Be in touch with your child's lawyer as the lawyer also should attend the staffing. You and the lawyer should agree to tell each other immediately upon receiving any notice of the meeting.
- Think about possible documents to bring with you (for example, documentation describing mental health problems and treatment recommendations).
- Think about possible participants and supporters to bring with you.
- Talk to, or ask your child's lawyer to talk to, your child's DYS caseworker and DYS clinician prior to the staffing and ask what they intend to recommend regarding time and placement. At this point, share appropriate information with the caseworker and clinician.

- Talk to your child's lawyer whether it is appropriate to ask for DYS to give credit for time served. This is particularly appropriate if your child has already served 30 days or more.
- Prepare your child to attend the staffing. Tell your child that it is important to have a serious demeanor and respect the process.

After the staffing meeting and before the classification meeting

- After the staffing meeting, the recommendations developed at that meeting will be forwarded to the DYS Regional Review Team, who will hold a classification meeting. Immediately after the staffing meeting, send a letter to your child's caseworker restating your main points regarding placement, duration and the service plan. Ask that the letter be submitted to the Regional Review Team for consideration at the classification meeting.
- At the staffing, DYS staff complete staffing notes and an initial service delivery plan. Send DYS a written request for these documents.
- If you or your child is dissatisfied with the way the staffing meeting was conducted, complain in writing to the DYS Regional Director, referring to the DYS region responsible for your child.
- If possible, attend your child's classification meeting. If you are able to attend, ask DYS in writing to provide you with notice of the date and place of the meeting.

After the classification meeting

- The Regional Review Team should issue a written decision within five business days of the classification meeting. Request a copy of this decision.
- A youth may appeal the decision in writing to the DYS Deputy Commissioner in DYS' Central Office in Boston within seven business days of receiving the decision. The Deputy Commissioner must respond in writing within 14 business days of receiving the appeal. If your child wants to appeal, he should ask his lawyer for help in writing the appeal request. The DYS caseworker also is required to assist the youth. The decision on appeal is final.

CHECKLIST OF STEPS TO TAKE BEFORE TRANSITIONING BACK TO THE COMMUNITY

For detained youths

- Detained youths who are discharged from DYS with a current medical problem must, upon request, be referred to a previous provider or another community provider.

For committed youths

- Think about when transition to the community will occur for your child. Transition to the community may occur when a youth's term of commitment has ended at age 18 or 21 or prior to that time pursuant to a grant of conditional liberty.
- Meet with DYS to start working on your child's transition as early as possible. Your child will have both a service delivery plan and a relapse prevention plan developed in preparation for his release. These plans describe how your child will transition from DYS confinement to the community. The DYS caseworker completes these plans working with the youth, his parents or legal guardian, DYS staff, and other community resources.
- The service delivery plan should be individualized and should describe the services the youth will receive in the community. These services may be provided directly by DYS or by other entities.
- At a minimum, intensive transition planning should begin when DYS holds a 90-day prior to release treatment meeting, attended by the caseworker, youth, parent/legal guardian, and program clinical staff. This is the first of three monthly meetings at which participants review and revise the youth's service delivery plan.
- From that point until release, the caseworker should follow through with any issues that may affect the youth's release date.
- At the 60 day meeting prior to release, participants shall review and sign off on the youth's relapse prevention plan. DYS expects that a youth will continue to work on and refine his relapse prevention plan up to the time of transition to the community.

- Medical staff are responsible for providing a referral to a local provider to follow-up on any existing medical or psychiatric problems when a committed youth returns home and for the duration of the youth's commitment. Such planning must be made in consultation with the parent or legal guardian and youth.

- The DYS caseworker and DYS clinician will talk to parents/guardians and the youth regarding relevant options for behavioral health services and which service(s) might best fit, including referral to Intensive Care Coordination (ICC) or other MassHealth services available to Medicaid-eligible youths. With consent, the DYS caseworker and DYS clinician will arrange for a referral to the local provider, including a Community Service Agency, and provide follow-up as needed to ensure that an initial intake and service assessment occurs. As DYS does not have legal custody of your child, it is the parent/legal guardian who decides which service is best.

Elements of a good transition plan

- In preparing for your child's transition to the community, ensure that the DYS service delivery plan addresses any of the following areas, as needed. As each youth's plan is individualized, it may or may not include these specific services, and it may include other services not listed here.

- health insurance coverage;
- medical care;
- dental care;
- mental health and substance abuse treatment;
- crisis intervention;
- anger management groups;
- skills training groups;
- victim awareness groups;
- sex offender treatment;
- violent offender treatment;
- family counseling and referrals;
- respite care;
- vocational training;
- employment issues;
- educational services (including by addressing specific issues including transcript transfer, access to the local school district, pursuit of a Massachusetts State High School Equivalency Diploma (GED), and

- placement);
- living arrangements (including any foster care, independent living, or step down transition programs);
 - parenting issues;
 - substance abuse screening and testing;
 - monitoring, including electronic monitoring;
 - assistance in fulfilling any legal obligations including
 - victim notification requirements of Mass. Gen. L. ch. 258B, § 3(t);
 - sex offender registry requirements of Mass. Gen. L. ch. 6, §§ 178C-178P.

CHECKLIST OF STEPS TO TAKE BEFORE SIGNING A GRANT OF CONDITIONAL LIBERTY

Before your child signs a grant of conditional liberty

- Encourage your child to show you the proposed grant before signing.
- Evaluate all proposed provisions carefully before agreeing to them. Provisions should appear reasonable, relevant, and ones that your child will be capable of complying with.
- If the provisions do not meet these criteria, ask that they be modified.
- If you cannot reach agreement on the terms, consider seeking legal assistance.

CHECKLIST OF STEPS TO TAKE IN RESPONSE TO A POTENTIAL REVOCATION OF A GRANT OF CONDITIONAL LIBERTY

Before the hearing on the revocation of a grant of conditional liberty

- Review any paperwork regarding the revocation hearing that DYS provides.
- Seek a copy of the DYS caseworker's Conditional Liberty Violation Report (CLVR) investigating the allegations of a violation. Any violation that the caseworker wants to use as evidence of a violation of the grant must be included in the report. As soon as possible after your child's return to custody, the caseworker must give him a copy of the Conditional Liberty Violation Report (CLVR). DYS must also give a copy of the CLVR to the parent/legal guardian and your child's lawyer, if any.
- Ask for any documents DYS is using to support the allegations in the CLVR.
- The DYS caseworker forwards the CLVR to the DYS District Manager. The District Manager reviews the CLVR and supporting documentation to determine if probable cause exists to believe that violation(s) occurred. If yes, the District Manager records a finding of probable cause to pursue the revocation of a the grant of conditional liberty on a Probable Cause Determination Form. Seek a copy of this form.
- The DYS caseworker must meet with your child to explain the allegations, the revocation hearing process, and your child's right to present evidence in defense at the hearing. Furthermore, DYS must give your child a copy of a form providing notice of the right to a hearing. Ask for and review a copy of this form.
- If DYS chooses to pursue a revocation of a grant of conditional liberty and the re-imposition of the original sentence, DYS must provide the opportunity for a contested hearing within 7 days of taking the youth back into physical custody.
- Consider whether you need to reschedule the hearing for good

cause. Good cause may include, for example, verified illness/hospitalization, failure to receive sufficient or timely notice, or a lawyer schedule conflict.

- A youth has a right to bring a lawyer to the revocation hearing. Indigent youths are offered a lawyer to represent the youth for free at the hearing.
- If your child doesn't have a lawyer, he should ask for one in writing before the hearing.

At the hearing on a revocation of a grant of conditional liberty

- The youth should attend the hearing.
- The DYS caseworker has the burden of persuading the hearing officer by a preponderance of the evidence that the violations occurred. Be prepared to contest this claim.
- At the hearing, the caseworker presents on behalf of DYS the evidence of the violation(s) and submits supporting documentation to the hearing officer. The caseworker must provide a copy of the supporting documentation to the youth.
- A youth has a right to bring a lawyer to the revocation hearing. Each indigent youth is offered a lawyer to represent him for free at the hearing. The lawyers that represent youths at these hearings are overseen by the Youth Advocacy Department (YAD) of the Committee for Public Counsel Services. The YAD Revocation Advocacy Coordinator can be reached at (617) 989-8128. If your child doesn't have a lawyer, ask for one again at the hearing.
- A parent or legal guardian may and should attend to support the youth. Further, the parent or legal guardian may assist the youth present his case if no lawyer is available to represent the youth.
- Invite individuals to testify who can give relevant and persuasive information to the hearing officer.
- The youth is entitled to confront and cross-examine witnesses, examine and dispute evidence, produce evidence and make an opening and closing statement. Be prepared to do so.
- If an individual who has given evidence against the youth is not

at the hearing, the youth may ask the hearing officer – at the beginning of the hearing -- that either that individual appear at the hearing so that the youth can question the individual or that the information not be admitted into evidence.

- In addition to contesting the violation, your child could put the violation into context.
- Your child could suggest alternatives to lock up, such as a change in school placement, a change in medication, or the introduction of counseling.
- Youth who suffer from a disability could argue, if appropriate, that the alleged violation was due to the disability and that DYS should make a reasonable accommodation and not pursue the revocation in this instance.
- An individual who wants to support the youth but is unable to attend the hearing may submit a written statement to the Hearing Officer at DYS's Central Office in Boston.
- At the end of the hearing, ask when the decision will issue. The Hearing Officer ordinarily will make findings, although the Hearing Officer may delay making findings for up to 3 business days. However, if necessary, the Hearing Officer may take a case under advisement, and thereby delay making a decision for any reasonable length of time.
- All findings must be in writing and DYS must provide a copy to the youth and to any parent, legal guardian or lawyer who attends the hearing. If you do not receive findings, request them from DYS. A parent or legal guardian who does not attend the hearing still has a right to request and receive a copy of the findings.
- If the Hearing Officer finds that the allegations of violations are unfounded, the youth must be released.
- If the Hearing Officer finds that a preponderance of the evidence shows a violation of the agreement, the Hearing Officer must determine the appropriate sanction. The Hearing Officer must consider the prior revocation history and the caseworker's recommendation.
- If the Hearing Officer orders revocation, he may do any of the following: release the youth with new conditions on the grant;

confine the youth in a facility for up to 120 days; send the case to the DYS Regional Review Team to consider a confinement of up to 6 months; take the case under advisement; await action from the court; or continue the hearing.

- The Hearing Officer also may consider other reasonable alternatives that are in the youth's best interest. Be sure to present those alternatives during the hearing.
- If a case is sent to the DYS Regional Review Team, taken under advisement, postponed, or continued, it must be disposed of within 21 calendar days.

Appeal of a hearing officer's decision on a revocation of a grant of conditional liberty

- A youth has the right to appeal the hearing officer's decision to the Commissioner or the Commissioner's designee. The DYS caseworker may assist the youth in writing the appeal. The youth, family, or lawyer also may write the appeal.
- DYS policy states that all appeals must be submitted within 7 days of receiving the hearing officer's decision.
- The Commissioner or designee must respond in writing within 14 calendar days.
- One may appeal for any of the following reasons:
 - the decision was beyond the hearing officer's authority;
 - the decision was based on an error of law;
 - the decision was based upon illegal procedure;
 - the decision was not supported by the evidence;
 - the decision was arbitrary or capricious (that is, the decision was not based upon reasonable grounds or adequate consideration of the facts).
- There is no hearing on an appeal.
- The decision on an appeal is final, and there is no process available after the appeal decision.

ACKNOWLEDGEMENTS

The first draft of this guide was conceived of, researched, and written by Brandeis University student Rebecca Gedalius in Spring 2005. Much of the structure, flavor and content of this publication is hers. We gratefully recognize her contribution. MHLAC also thanks Melissa Stimell and the Legal Studies Program at Brandeis for matching Rebecca with MHLAC.

This guide draws upon previous guides for youth and families involved in the juvenile justice system, notably:

- *“From a Parent’s Perspective,” by Linda (Smelstor) Pedersen and published by the Massachusetts organization, Citizens for Juvenile Justice (2000);*
- *“Kids and the Law: A User’s Guide to the Court System,” by Rebecca Pries and Carol Rosensweig (3rd ed. 2002);*
- *“Making Your Voice Heard: Family Advocacy Handbook,” by Gabriella Celeste and published by Juvenile Justice Project of Louisiana;*
- *The Parents’ How-to Guide to Children’s Mental Health Services in Massachusetts, by the Boston Bar Association and other organizations and published by the Boston Bar Association (2004).*

MHLAC particularly would like to thank Joshua Dohan, Lael Chester, Barbara Kaban, Cecely Reardon and Robert Fleischner who commented extensively on drafts of this document. MHLAC extends a special thank you to Judge Stephen Limon, whose edits formed the basis for the third edition.

We also would like to acknowledge the extensive and excellent assistance of AmeriCorps members Judy Pisnanont, Lyndsey Frushour, Sandra Carter, Sarah Sallen, Claire Bolton and Ayan Mohamed, who came to MHLAC through AmeriCorps’ Massachusetts Legal Assistance for Self-Sufficiency Program, which is administered by South Coastal Counties Legal Services, Inc.

In addition, MHLAC would like to thank the following individuals for their contributions to this book:

Calvin Feliciano; Jenny Chou; Hon. Jay Blitzman; Andrea Watson; Jeremy Maco; William Landers; Kathleen Boundy; Jurgen Kern; Megan Bremer; Francine Sherman; Tina Adams; Jeanne Greeley; Yvonne Sparling; Vicky Pulos; Janice Manfredi; Rebecca Rodman; Melissa Sewruk; Barbara Fedders; Robert Kinscherff; Richard Romboletti; Wes Cotter; Maggie Giles; Patricia Cone; Stan Goldman; Lester Blumberg; Katie Martin; Joan Mikula; Edward Dolan; Crispin Birnbaum, Wendy Wolf, Mary Silva, Diane Curran, Peter Kosciusko and Robert Turillo.

We also acknowledge the layout and design of this book by Laura Colby at MHLAC and the technical support from Glenn Kendall of the Commonwealth Print Services. For funding the publication of the third edition, we thank the Massachusetts Juvenile Justice Advisory Committee, as well as Ellen Frank, Andrew Polk, and Colina Cole of the Executive Office of Public Safety and Security.

Finally, we recognize the contributions of MHLAC’s student interns: Sarah Thompson, Christine Hayes, Angelica Vargas, Sarah DeOliveira, Kristin Musto, Elizabeth Grimm, Seth Klotz, Mari Lubin, and Crystal Rodriguez.

All errors are MHLAC’s alone.



The Commonwealth of
Massachusetts

Mental Health Legal Advisors
Committee



Massachusetts Legal Assistance for Self-
Sufficiency Program

An AmeriCorps Program

