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NOTE

**THE CHINS DON'T STAND A CHANCE: THE DUBIOUS
ACHIEVEMENTS OF CHILD IN NEED OF SERVICES
("CHINS") JURISDICTION IN MASSACHUSETTS
& A NEW APPROACH TO JUVENILE
STATUS OFFENSES**

DAVID AARON MICHEL*

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I. INTRODUCTION

Disparate legal treatment of children and adults, due to fundamental differences in development, maturity, and cognition, has a long history of acceptance by courts, legislators, and society as a whole.¹ There are myriad examples of legal distinctions between juveniles and adults, ranging from relatively mundane age restrictions on driving, voting, and alcohol consumption, to monumental differences in the application of certain constitutional rights.² These differences are particularly salient in the context of criminal law and the juvenile court.³

Two conflicting ideologies form the basis of the modern juvenile justice system: the societal imperative to curb youth misbehavior, and the belief that the state should rehabilitate, rather than punish, misbehaving youth, due to the state's special *parens patriae* responsibility to protect children and foster their development.⁴ The concept of *parens patriae*, meaning "parent of his or her country" in Latin, views the state as a sovereign with the power and responsibility to "provide protection to those unable to care for themselves."⁵ Juvenile court systems originated in the *parens patriae* jurisdiction of the English Court of Chancery, which dealt with child welfare and neglect matters as an extension of the King's "*pater patrie*" guardianship of juvenile subjects.⁶ Progressive reformers in the United States began advocating for a separate juvenile justice system in the late 1800s.⁷ Illinois became the first state to establish a juvenile court in 1899, and every state in the Union has since followed suit.⁸ Juvenile

¹ See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); Jay D. Blitzman, *Gault's Promise*, 9 BARRY L. REV. 67, 68, 70 (2007); Barry C. Feld, *A Century of Juvenile Justice: A Work in Progress or a Revolution That Failed?*, 34 N. KY. L. REV. 189, 243-44 (2007) (citing *Roper*, 543 U.S. at 572-73); Howard T. Matthews, Jr., *Status Offenders: Our Children's Constitutional Rights Versus What's Right for Them*, 27 S.U. L. REV. 201, 203 (2000).

² See *Roper*, 543 U.S. at 569, 577 (finding capital punishment unconstitutional when applied to juveniles under the age of eighteen).

³ *Bellotti*, 443 U.S. at 634-35.

⁴ See Joyce London Alexander, *Aligning the Goals of Juvenile Justice with the Needs of Young Women Offenders: A Proposed Praxis for Transformational Justice*, 32 SUFFOLK U. L. REV. 555, 557-58 (1999).

⁵ BLACK'S LAW DICTIONARY 1221 (9th ed. 2004).

⁶ Blitzman, *supra* note 1, at 73.

⁷ Maggie L. Hughey, Note, *Holding a Child in Contempt*, 46 DUKE L.J. 353, 355 (1996).

⁸ *Id.* at 355-56.

court jurisdiction, as is the case in Massachusetts, typically encompasses three areas: (1) delinquency proceedings for juveniles accused of committing crimes; (2) care and protection matters dealing with problems related to neglect or abuse; and, (3) Child in Need of Services status offense cases.⁹ This Note examines the Child in Need of Services (“CHINS”) status offense jurisdiction of the Massachusetts juvenile courts.

Children who commit certain acts that would not be criminal if committed by adults may be subject to juvenile court status offense jurisdiction.¹⁰ Status offenders subject to CHINS jurisdiction fall into three categories: truants, run-aways, and stubborn children.¹¹ CHINS statutes allow the juvenile courts to intervene in cases where a child’s behavior suggests a tendency towards future delinquency.¹² The predominately rehabilitative goals of the CHINS system are threefold: preventing the child from engaging in future delinquent or criminal activity, fostering the child’s educational development, and providing support to families in times of conflict and “emotional turbulence.”¹³ Unfortunately, the practical operation of the CHINS system in Massachusetts is fraught with defects that often prevent the achievement of the statutes’ noble intentions.

Several often related challenges ensure that the CHINS statutes cannot perform their desired function. There is a strong correlation between CHINS involvement and future delinquency, demonstrating that CHINS is an ineffective mechanism to deter delinquency.¹⁴ One glaring statutory shortfall is the lack of any effective judicial enforcement mechanism for CHINS orders and agreements.¹⁵ Furthermore, while CHINS proceedings are explicitly designated as distinct from the courts’ criminal and delinquency functions, several factors undermine this distinction.¹⁶ Additionally, there is a danger that children will not be able to distinguish between CHINS and criminal jurisdiction within the

⁹ Alexander, *supra* note 4, at 559.

¹⁰ See Matthews, *supra* note 1, at 202. Certain status offenses, such as driving underage, possessing alcohol as a minor, or driving with any blood alcohol level as a minor (even if below the statutory limit), are subject to delinquency, rather than CHINS, proceedings.

¹¹ Martha P. Grace, *Are We Really Willing to Commit to Prevention?*, 34 NEW ENG. L. REV. 645, 646 (2000); see also MASS. GEN. LAWS ANN. ch. 119, §§ 21, 39E (West 2009).

¹² RODERICK L. IRELAND, JUVENILE LAW §§ 4.1, 4.5 (2d ed. 2009). The author of this practice manual, Roderick L. Ireland, is the Chief Justice of the Massachusetts Supreme Judicial Court—the state’s highest court. His prior judicial experience includes almost thirteen years on the bench of the Boston Juvenile Court, seven years on the Massachusetts Court of Appeals, and thirteen years as an Associate Justice of the Massachusetts Supreme Judicial Court. *The Justices*, SUPREME JUDICIAL COURT, <http://www.mass.gov/courts/sjc/justices/ireland.html> (last visited July 5, 2011).

¹³ IRELAND, *supra* note 12, at § 4.5.

¹⁴ See *Commonwealth v. Florence F.*, 709 N.E.2d 418, 422 (Mass. 1999); Blitzman, *supra* note 1, at 95.

¹⁵ See *Florence F.*, 709 N.E.2d at 422.

¹⁶ See MASS. GEN. LAWS ANN. ch. 119, § 39E (West 2009).

juvenile courts.¹⁷ The high probability that a child who is subject to a CHINS proceeding will subsequently be involved with the juvenile court on a delinquency matter can further obscure these lines as a child's court dates and obligations grow increasingly intertwined.¹⁸ Finally, certain features of the CHINS system may directly encourage delinquency.¹⁹ One commentator notes that "status offenses have become a gateway to criminal behavior," and warns that status offenders, through their involvement with the juvenile courts, are in danger of being "transformed into criminals."²⁰ By initiating children into the juvenile justice system, the experience may acclimate youths to expect court-imposed authority and punishment, engender resentment towards authority figures and the judicial system, and potentially exacerbate the types of misbehavior that typically underlie CHINS offenses.

Massachusetts's CHINS statutes require revision before they can fulfill their primary goal of preventing future delinquency through education, rehabilitation, and familial reconciliation.²¹ Juvenile judges and the juvenile courts must see their role in the CHINS process drastically reduced, and should only enter the proceedings as a last resort. Rehabilitation, treatment, and education must be the system's central focus. School officials, social workers, parents, and mental health professionals should be its most visible actors. Instituting these reforms will require the wholehearted participation of government agencies, community organizations, schools, and, perhaps most importantly, legislators responsible for allocating funding. Finally, any statutory revision should include an appropriate enforcement mechanism to encourage juvenile compliance with CHINS orders while maintaining the essentially non-criminal nature of the sanctioned offenses. A system of civil fines, roughly premised on local youth curfew ordinances and juvenile provisions of Massachusetts marijuana possession statutes, could provide an effective alternative means of judicial enforcement in CHINS proceedings and strike the necessary balance of underlying policy concerns.

In consideration of the above-stated goals, Part II of this Note will discuss the historical evolution of the juvenile justice system in Massachusetts. Part III provides an overview of juvenile status offenses and CHINS jurisdiction, as well as a detailed description of the Massachusetts CHINS statutes and their practical operation. Part IV discusses several shortcomings of the CHINS system. Part V argues that the practical application of the CHINS system often

¹⁷ See Luz A. Carrion, Comment, *Rethinking Expungement of Juvenile Records in Massachusetts: The Case of Commonwealth v. Galvin G.*, 38 NEW ENG. L. REV. 331, 335 (2004); Soma R. Kedia, *Creating an Adolescent Criminal Class: Juvenile Court Jurisdiction Over Status Offenders*, 5 CARDOZO PUB. L. POL'Y & ETHICS J. 543, 559 (2007).

¹⁸ See *Florence F.*, 709 N.E.2d at 422.

¹⁹ See Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 172 (2004).

²⁰ *Id.* at 172.

²¹ See *infra*, Part V.

operates against the best interests of the children it seeks to rehabilitate. Finally, Part VI proposes several reforms, including a novel, explicitly civil approach to the enforcement of CHINS orders and agreements in Massachusetts.

II. HISTORY OF THE JUVENILE COURT IN MASSACHUSETTS

A. *The National Evolution of Juvenile Status Offense Jurisdiction*

At its inception, the juvenile justice system was primarily a state concern and several states adopted widely disparate approaches to the rights of children.²² Many states entrusted judges with broad discretion under the *parens patriae* doctrine, which led to comparatively unequal and seemingly arbitrary adjudications in state juvenile courts.²³ The federal government had little involvement with juvenile courts until the 1960s when the Supreme Court, under Chief Justice Earl Warren, imposed procedural formalities on juvenile court proceedings under the Fourteenth Amendment and the Bill of Rights.²⁴

The Supreme Court, in *Kent v. United States*, imposed the first nationally mandated procedural safeguards for child defendants in juvenile court, bemoaning that “the child receives the worst of both worlds . . . he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”²⁵ In 1967, the Court decided the landmark juvenile justice case *In re Gault*, which required states to provide broad due process rights to children in delinquency proceedings, including the right to “notice, a fair hearing, assistance of counsel, the opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination.”²⁶ These procedural reforms created a baseline level of equality and fairness amongst children subject to juvenile court proceedings, but at the same time, the reforms brought the juvenile courts closer in form and substance to their adult criminal counterparts by legitimizing punishment and leading to more severe dispositions across the field of juvenile justice.²⁷

Statutory prohibition of juvenile status offenses in Massachusetts originated in colonial times; the Massachusetts Stubborn Child Law of 1646 allowed courts to impose the death penalty on obstinate youths for many transgressions, including disobeying their parents, disruptive rudeness, and blaspheming the Sabbath.²⁸ New York was the first state to segregate its juvenile courts’ status offense and delinquency jurisdictions.²⁹ Soon thereafter, Congress passed the

²² See Alexander, *supra* note 4, at 559-61.

²³ See *id.* at 559-61.

²⁴ Feld, *supra* note 1, at 189-90, 201-03.

²⁵ *Id.* at 202 (quoting *Kent v. United States*, 383 U.S. 541, 556 (1966)).

²⁶ *Id.* at 202-03 (citing *In re Gault*, 387 U.S. 1, 33, 36, 41, 57 (1967)).

²⁷ *Id.* at 218.

²⁸ Alexander, *supra* note 4, at 558; Harry J. Rothgerber, Jr., *The Bootstrapping of Status Offenders: A Vicious Practice*, 1 KY. CHILD. RTS. J. 1, 1 (1991).

²⁹ Kedia, *supra* note 17, at 556.

Juvenile Justice and Delinquency Prevention Act (“JJDP”) in 1974, which required states to deinstitutionalize status offenders and remove them from facilities used to detain juvenile delinquents.³⁰ The creation of the Massachusetts CHINS system in 1973 decriminalized juvenile status offenses, eliminating criminal sanctions, focusing on non-punitive treatment and rehabilitation, and attempting to provide troubled children with protective care.³¹

B. *The Parens Patriae Doctrine and Massachusetts Juvenile Courts*

The Boston Juvenile Court (“BJC”), the first institution of its sort in Massachusetts, opened for business in 1906 against the background of shifting societal attitudes recognizing central developmental differences and requirements of children compared with adults.³² The BJC remained the sole juvenile court in the Commonwealth until the establishment of juvenile courts in Worcester and Springfield in 1969 and Bristol County in 1972.³³ In 1992, the Massachusetts legislature passed the Court Reform Act, which established a statewide juvenile court with expanded subject matter and territorial jurisdiction.³⁴ Today, the Massachusetts Juvenile Court Department has eleven divisions and consists of one chief justice and forty associate justices sitting in over thirty-five locations across the state.³⁵

The *parens patriae* doctrine provides the philosophical underpinning for Massachusetts’s juvenile court system, and its essence is statutorily cemented in chapter 119, section 53 of the Massachusetts General Laws.³⁶ Section 53 calls for flexible construction of the statutes outlining delinquency procedures to ensure that “the care, custody and discipline of the children brought before the court 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.”³⁷ The first judge of the BJC, Judge Harvey Humphrey Baker, espoused a *parens patriae* approach to juvenile justice as the path best suited to serve the dual needs of children and the community.³⁸

Judge Baker’s primary goal was to place youths who came before the BJC

³⁰ *Id.*

³¹ *Commonwealth v. Florence F.*, 709 N.E.2d 418, 421 (1999) (discussing the policy foundations of Massachusetts CHINS statutes).

³² THE MASS. COURT SYS., ANNUAL REPORT FOR FISCAL YEAR 2008 I (2008); see Jane Strickland, *The 1992 Court Reform Act: Its Role in the Development of the Massachusetts Juvenile Court*, 39 BOSTON B.J. 9, 9 (1995).

³³ *Id.* at 10.

³⁴ Strickland, *supra* note 32, at 11-12.

³⁵ *Id.* at 12.

³⁶ MASS. GEN. LAWS ANN. ch. 119, § 53 (West 2009); Blitzman, *supra* note 1, at 67.

³⁷ MASS. GEN. LAWS ANN. ch. 119, § 53 (West 2009).

³⁸ See Strickland, *supra* note 32, at 9.

“in a normal relation to society as promptly and as permanently as possible.”³⁹ Fundamental to Judge Baker’s approach was the belief that in order to determine the appropriate course of action in any case, the BJC had to understand each individual offender and that punishment would be ineffective unless it was tailored to the needs and characteristics of a particular offender.⁴⁰ Judge Baker envisioned three independent constituencies that would contribute their specialized expertise to help fulfill the juvenile court’s mission: the probation department, a court clinic, and an easily accessible network of extra-judicial public and private service agencies throughout the community.⁴¹ Judge Baker’s attempts to assemble and concentrate widespread community resources towards improving the care of, and conditions affecting, children in the juvenile courts exemplified his belief in the potential of *parens patriae*, and the model Judge Baker helped forge remains central to Massachusetts’s modern juvenile justice system.⁴² However, overreliance on *parens patriae* often leads to a slippery slope where the “parental” state, through the exercise of its legal authority, can dramatically impact youths’ lives based on highly subjective and questionably accurate “best interest” determinations.⁴³

III. CHINS IN MASSACHUSETTS

A. *Status Offenses*

Juvenile courts in Massachusetts have three primary areas of jurisdiction: delinquency, care and protection, and CHINS.⁴⁴ Delinquency jurisdiction applies to children who have allegedly committed an act that constitutes a crime when the perpetrator is an adult, while subjects of care and protection matters come into the juvenile courts because of the abusive or neglectful behavior of a parent.⁴⁵ Status offenders occupy a unique niche within the juvenile justice system.⁴⁶ Status offenders come before the courts as a result of their own behavior, but for actions that typically do not constitute a criminal offense when performed by one who has attained the age of majority.⁴⁷ As a result, juvenile court judges are highly invested in CHINS proceedings.⁴⁸ In her law review article on striking a balance as a juvenile court justice, the Honorable Martha P. Grace noted, “We take [CHINS proceedings] very seriously since it may be the

³⁹ See *id.* (quoting JUDGE BAKER FOUND., HARVEY HUMPHREY BAKER, UPBUILDER OF THE JUVENILE COURT 109 (1921)).

⁴⁰ See *id.* at 9.

⁴¹ See *id.*

⁴² See *id.* at 10, 29.

⁴³ Humphrey, *supra* note 20, at 166.

⁴⁴ Strickland, *supra* note 32, at 10.

⁴⁵ See Matthews, *supra* note 10, at 202.

⁴⁶ *Id.*

⁴⁷ *Id.*; Humphrey, *supra* note 20, at 166.

⁴⁸ See Grace, *supra* note 11, at 646

first time that we see a child in our system. It is at that point that we need to intervene to prevent them from becoming delinquent.”⁴⁹ Every state has some form of juvenile court status jurisdiction—while Massachusetts has the CHINS system, other states have PINS, JINS, YINS, or FINS (people, juveniles, youth, or families in need of either services or support).⁵⁰

Juvenile status offender jurisdiction rests upon the premise that the state has a “legitimate interest . . . to protect the welfare of its youth and thus impose rehabilitative treatment when necessary.”⁵¹ This jurisdiction also rests upon the belief that this *parens patriae* authority is needed to prevent a “status offender’s misbehavior from escalating into delinquency.”⁵² CHINS cases generally fall into three categories: runaways, truants, and stubborn children.⁵³ A fourth category, the school offender, is essentially a hybrid of the truant and stubborn child CHINS whose misbehavior occurred at school, and is typically considered a subset of the broader truant CHINS category.⁵⁴ Massachusetts is among “the most progressive states” in providing status offenders with procedural protections in the juvenile courts.⁵⁵ The CHINS statutes require status offense proceedings to be completely distinct from the juvenile court’s delinquency functions.⁵⁶ Whether or not the system is able to maintain this distinction is a matter of debate. In order to grasp the deficiencies that hinder the preventive purpose of the CHINS statutes, it is necessary to first understand how the CHINS process operates.

B. *The CHINS Process*

Any statutorily authorized individual may apply for a CHINS petition with a juvenile court, thus initiating the CHINS process.⁵⁷ Chapter 119, section 39E of the Massachusetts General Laws authorizes police officers, as well as par-

⁴⁹ *Id.* at 646.

⁵⁰ Blitzman, *supra* note 1, at 88; Matthews, *supra* note 10, at 205.

⁵¹ Matthews, *supra* note 10, at 202, 204.

⁵² *Id.*

⁵³ See Grace, *supra* note 11, at 646; see also Blitzman, *supra* note 1, at 95. Massachusetts defines a child in need of services as:

A child between the ages of 6 and 17 who: (a) repeatedly runs away from the home of a parent or legal guardian; (b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian, thereby interfering with the parent’s or legal guardian’s ability to adequately care for and protect the child; (c) repeatedly fails to obey lawful and reasonable school regulations; or, (d) when not otherwise excused from attendance in accordance with lawful and reasonable school regulations, willfully fails to attend school for more than 8 school days in a quarter. MASS. GEN. LAWS ANN. ch. 119, § 21 (West 2011).

⁵⁴ See *id.* § 21; see also Grace, *supra* note 11, at 645-46.

⁵⁵ Humphrey, *supra* note 20, at 181-82.

⁵⁶ See MASS. GEN. LAWS ANN. ch. 119, §§ 39E, 39G; Commonwealth v. Florence F., 709 N.E.2d 418, 421 (Mass. 1999).

⁵⁷ See MASS. GEN. LAWS ANN. ch. 119, § 39E.

ents or legal guardians having custody of “such child,” to apply for a petition in the case of runaways and stubborn children.⁵⁸ When a child is truant, any “supervisor of attendance” at the child’s school may apply for a petition alleging that the “child persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school.”⁵⁹ Truant CHINS cases cannot extend beyond a child’s sixteenth birthday, as Massachusetts law compels school attendance only until the age of sixteen with limited exceptions.⁶⁰ Once the application is filed, the court schedules a date for a preliminary hearing to determine whether to issue the CHINS petition.⁶¹ Though technically called the “preliminary hearing,” practitioners typically refer to this as the “arraignment” because of its similarities with the first hearing in the delinquency process.⁶² If a CHINS case begins with the arrest of the child, the juvenile courts automatically issue the petition; no application process is required.⁶³ Prior to the preliminary hearing, the court’s chief probation officer designates one of his officers to conduct a preliminary inquiry into the child’s situation and makes a recommendation as to whether issuing the petition is in the child’s best interests.⁶⁴

The preliminary hearing takes place before a juvenile court judge and consists of the probation officer’s testimony and recommendation.⁶⁵ Other parties, such as parents or legal guardians, may also present evidence.⁶⁶ The court chooses from three potential dispositions: it may “decline to issue the petition” for lack of probable cause to believe that the child requires services, determine that the child’s interests are best served by informal assistance and refer the child to the probation department for services rather than issuing the petition, or, “issue the petition” pursuant to a finding of probable cause and schedule a trial on the merits.⁶⁷ If the child comes before the court on arrest, the petition will be issued, and the probation officer will conduct an abbreviated inquiry and report to the court whether the child’s best interests will be served by informal assistance or a trial on the merits.⁶⁸

When the court refers a child to probation for assistance pursuant to the CHINS statutes, the probation officer may refer the child to “an appropriate public or private organization or person for psychiatric, psychological, educa-

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See MASS. GEN. LAWS ANN. ch. 76, §§ 1, 18 (West 2009).

⁶¹ MASS. GEN. LAWS ANN. ch. 119, § 39E.

⁶² Interview with Wendy Kaplan, Associate Clinical Professor of Law, Boston University School of Law, in Boston, MA. (May 27, 2009).

⁶³ MASS. GEN. LAWS ANN. ch. 119, § 39E.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

tional, occupational, medical, dental or social services and shall have the authority to conduct conferences with the child and the child's family"⁶⁹ Such agencies may include the Department of Children and Families ("DCF"), the Department of Mental Health ("DMH"), and community based service organizations, such as the Boys and Girls Club, Big Brother, or the YMCA, among others.⁷⁰ The goal of the probation officer's assistance at this juncture is to establish CHINS agreements between the parents and child that will lead to adjustments in behavior.⁷¹ Ideally, this will resolve the issues underlying the CHINS proceeding and render a formal trial unnecessary.⁷² These CHINS agreements must be in force for a six-month period, but may be extended for an additional six months with the consent of the child and the parents.⁷³ At the expiration of the final period, the court will either dismiss the petition if the informal assistance has proved effective or issue the petition and set a trial date.⁷⁴ The court may not use any statements the child has made during this period at the CHINS trial; however, the court may consider such statements in the post-adjudicative phase to aid with dispositional determinations.⁷⁵

Following the issuance of a CHINS petition, the court will send a summons to the child and both parents, if they reside in the Commonwealth, or whichever parent or legal guardian resides in the Commonwealth and is available.⁷⁶ If a child does not respond to the summons, the court can issue a warrant, subjecting the child to arrest.⁷⁷ If the court determines that an allegedly "stubborn child" presently before the court is not likely to appear at either a future preliminary hearing or a CHINS trial, the court can impose bail or release the child subject to certain terms and conditions.⁷⁸ If a child fails to post bail, is detained for violation of a condition of release, or if his or her guardians refuse to appear or take custody of the child, the court may detain the child for fifteen days.⁷⁹ After this fifteen-day period, the court will hold a hearing to determine whether to detain the child for an additional fifteen days.⁸⁰ The total length of incarceration, however, cannot extend beyond forty-five days.⁸¹ Children held on bail subject to CHINS petitions are placed in DCF facilities, rather than Department

⁶⁹ *Id.*

⁷⁰ Interview with Wendy Kaplan, Associate Clinical Professor of Law, Boston University School of Law, in Boston, MA. (May 27, 2009).

⁷¹ MASS. GEN. LAWS ANN. ch. 119, § 39E.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* § 39H.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

of Youth Services (“DYS”) juvenile detention centers.⁸² The court’s decision on bail and detention is immediately appealable.⁸³ The penalties for failure to respond to a summons and for being deemed unlikely to appear for one’s court date represent the only civil detention authorized by the CHINS statutes.⁸⁴ Nevertheless, the presence of a bail hearing and the threat of potential detention, no matter its form, contribute to the blurring of the lines between CHINS and delinquency proceedings, particularly from the child’s perspective.

Furthermore, such proceedings and potentially restrictive outcomes can become mechanisms for what this Note refers to as de-facto bootstrapping. Traditional bootstrapping is a byproduct of the limited dispositional options and impotent enforcement mechanisms available to juvenile court judges in juvenile status offense proceedings.⁸⁵ Several states permit bootstrapping: they allow juvenile court judges to hold status offenders in criminal contempt for the violation of valid court orders stemming from a status offense proceeding.⁸⁶ Thus, a recidivist status offender who violates a judge’s order, defaults on a court date, or even simply disobeys a parent could face charges of criminal contempt.⁸⁷ The child would thus be subject to a delinquency proceeding for the same status offense that originally brought him before the court.⁸⁸

Bootstrapping, in its traditional form, is prohibited in Massachusetts.⁸⁹ However, CHINS proceedings create a pervasive danger of de-facto bootstrapping. De-facto bootstrapping occurs when the judges in a subsequent CHINS, delinquency, or even adult criminal proceeding sees a defendant with a lengthy record of truancy, stubbornness, defiance of CHINS orders, or defaults on CHINS agreements, and are less inclined to admit the individual to bail and less amenable to calls for leniency in adjudication.⁹⁰ Judges’ ability to hold stubborn children subject to CHINS petitions on bail and order the arrest of those children who do not appear when summoned are examples of the de-facto bootstrapping that blurs the lines between the Massachusetts’s juvenile courts’ status offense and delinquency functions.⁹¹ Mandated pre-trial detention should be reserved strictly for delinquency proceedings; the availability of pre-trial detention in status offense cases is both potentially confusing and contrary to the underlying goals of CHINS.

CHINS trials, although explicitly non-criminal in nature, share many common features with criminal and delinquency proceedings. CHINS proceedings

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See id.* §§ 39E-39J.

⁸⁵ Humphrey, *supra* note 20, at 170.

⁸⁶ Kedia, *supra* note 17, at 559.

⁸⁷ Rothgerber, *supra* note 28, at 2.

⁸⁸ *Id.*

⁸⁹ Commonwealth v. Florence F., 709 N.E.2d 418, 419 (Mass. 1999).

⁹⁰ *See* Humphrey, *supra* note 19, at 170.

⁹¹ *See* MASS. GEN. LAWS ANN. ch. 119, § 39H (West 2008).

afford children many of the same due process rights accorded to youths who have been charged with delinquency.⁹² Children have the right to be present and the right to counsel at all hearings.⁹³ Indigent alleged CHINS have the right to court-appointed counsel if they cannot afford private representation.⁹⁴ Children also have the right to a six-member jury trial, and they can only waive this right if represented by counsel, or if a parent or guardian files a written waiver on the child's behalf.⁹⁵ The burden of proof in CHINS proceedings is the same as in criminal court: to find that a child is "in need of services" under the CHINS statutes, all allegations must be proved beyond a reasonable doubt.⁹⁶ Furthermore, in a jury CHINS trial, the child has the right to a unanimous verdict.⁹⁷ Once adjudicated as a CHINS, a child has the statutory right to de novo appellate review of the proceedings.⁹⁸ Ultimately, the major distinctions that delineate CHINS trials from their delinquency equivalents are the dispositional options available to the judge, but this distinction in punishment does little to overcome the overwhelming similarities in form, procedure, location, burden, due process rights, stigmatization, and emotional impact.⁹⁹

C. CHINS Dispositions

When a child is adjudicated as a CHINS, the juvenile judge, "taking into consideration the physical and emotional welfare of the child," may choose from the dispositional alternatives outlined in Chapter 119, section 39G of the Massachusetts General Laws.¹⁰⁰ The court may permit the child to remain with his parent or legal guardian pursuant to certain conditions, such as medical, psychological, psychiatric, educational, occupational, or social services and supervision by a court clinic, or by a public or private organization that provides counseling or guidance services.¹⁰¹ The court may also place the child with a relative or a qualified adult, with a private charitable or childcare agency or otherwise licensed private organization, or with a private organization deemed qualified to deal with the child's individual needs.¹⁰² Alternatively, the judge may commit the child to DCF, provided the child is less than eighteen years old.¹⁰³

⁹² See IRELAND, *supra* note 12, §§ 4.14-4.18.

⁹³ MASS. GEN. LAWS ANN. ch. 119, § 39G.

⁹⁴ *Id.* § 39F.

⁹⁵ *Id.* § 39E.

⁹⁶ *Id.* § 39G; *In re Angela*, 833 N.E.2d 575, 583 (Mass. 2005).

⁹⁷ MASS. GEN. LAWS ANN. ch. 119, § 39I.

⁹⁸ *Id.*

⁹⁹ See *id.* § 39G; *Commonwealth v. Florence F.*, 709 N.E.2d 418, 419 (Mass. 1999); see also IRELAND, *supra* note 12, § 4.5.

¹⁰⁰ MASS. GEN. LAWS ANN. ch. 119, § 39G.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Following a child's adjudication as a CHINS, the court will issue a CHINS order containing the judge's chosen disposition.¹⁰⁴ The judge may permit the child to remain in the custody of his parent or guardian subject to specified conditions or temporarily transfer the child's custody to a third party.¹⁰⁵ The probation department will continue to monitor the child's compliance with any post-adjudication orders, fulfilling a similar role to its responsibilities in the pre-trial period.¹⁰⁶ CHINS orders may continue in force for a maximum of six months and may be extended, pursuant to a hearing, for additional periods no longer than six months if the court deems an extension is likely to further the goals of the CHINS process.¹⁰⁷ The court may not commit a CHINS to any county training schools nor to any facilities operated for the detention of juvenile delinquents.¹⁰⁸ Dispositional orders may not extend past the eighteenth birthday of a runaway or stubborn child adjudicated a CHINS, or beyond the sixteenth birthday of a child adjudicated a CHINS for truancy.¹⁰⁹

D. *Dispositional Limitations and Judicial Authority*

Massachusetts courts have established further protections in addition to the statutory limitations on CHINS dispositions.¹¹⁰ The Supreme Judicial Court of Massachusetts ("SJC") has consistently adopted very narrow interpretations of the CHINS statutes, prohibiting both direct and contempt orders in CHINS cases as barred by the plain language of, and the legislative intent behind, the statutes.¹¹¹ Perhaps most importantly, all dispositional orders must be custodial, and the judge in a CHINS proceeding may not direct an order to the child, such as "you must attend school."¹¹² Instead, dispositional orders must be conditional upon custody, for instance, "you can stay with your parents providing you go to school, obey curfew, and obey your mother."¹¹³

In *Commonwealth v. Florence F.*, the SJC noted that the legislative intent of the CHINS statute was to segregate the juvenile court's CHINS function from its criminal and delinquency functions.¹¹⁴ Therefore, even if a child adjudicated a CHINS violates a valid dispositional order, that child cannot be subject to

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., *Commonwealth v. Florence F.*, 709 N.E.2d 418 (Mass. 1999); *In re Vincent*, 562 N.E.2d 465 (Mass. 1990).

¹¹¹ See *Florence F.*, 709 N.E.2d 418, 418 (Mass. 1999); *In re Vincent*, 562 N.E.2d at 467-68.

¹¹² *In re Vincent*, 562 N.E.2d at 467-68.

¹¹³ *Id.*

¹¹⁴ *Florence F.*, 709 N.E.2d at 418, 420-22.

criminal contempt sanctions.¹¹⁵ The *Florence* court noted that Massachusetts's CHINS statutes explicitly state all of the dispositional options that the legislature intended for a CHINS trial, and that the absence of language granting judicial authority for direct orders, criminal content, or criminal sanctions of any kind precludes their use.¹¹⁶ The court acknowledged that juvenile judges are left with little power to enforce orders in CHINS cases, cited the recidivism of CHINS as evidence of systematic dysfunction, and urged the legislature to address these problems.¹¹⁷ The SJC's decision in *Florence* established an outright prohibition on judicial bootstrapping of CHINS in Massachusetts.

Despite the intention for CHINS proceedings to be distinctly non-criminal, the process has many practical features that blur the line between criminal and non-criminal court functions, increase the likelihood of future delinquency, and add to the misfortune of those who graduate from the CHINS system to criminal court. The formal appearance of the CHINS trial mirrors that of a delinquency proceeding, and the only major distinction between the two from a child's perspective is dispositional.¹¹⁸ Furthermore, the absence of effective enforcement mechanisms can set up faulty expectations for future interactions with the justice system.¹¹⁹ Ultimately, the CHINS system, despite its progressive aspects, may exacerbate underlying issues that originally led to a child's involvement in a CHINS case, foster future delinquency, and set former CHINS kids up for failure, if or when they finally come before courts on criminal charges.

IV. SHORTCOMINGS OF THE CHINS SYSTEM

A. *The Vague Distinction Between Delinquency and CHINS Jurisdiction*

Although CHINS cases must remain explicitly non-criminal in nature and separate from the delinquency jurisdiction of the juvenile courts, many factors obscure this distinction. Children subject to CHINS proceedings share many of the same due process rights as criminal defendants.¹²⁰ The formal appearance of the proceedings mirror those of the delinquency system, including the initiation of the procedure by arrest or application, preliminary hearing, bail determination, probation involvement, trial on the merits, adjudication, and post-adjudication monitoring by probation or commitment to state agencies.¹²¹ This can be extremely confusing for children who lack familiarity with the intricacies of the criminal justice system, and who may have a difficult time recognizing any

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 422.

¹¹⁷ *Id.* at 421-22.

¹¹⁸ See *supra* text accompanying notes 24-27, 99; see also MASS. GEN. LAWS ANN. ch. 119, §§ 39H-39J (West 2008); Feld, *supra* note 1, at 251.

¹¹⁹ *Florence F.*, 709 N.E.2d at 422.

¹²⁰ IRELAND, *supra* note 12, §§ 4.1, 4.5.

¹²¹ See *supra* notes 39-83 and accompanying text.

distinction between a CHINS allegation and a criminal charge.¹²²

Another factor that blurs the distinction between CHINS proceedings and delinquency is the major role of the juvenile probation department throughout the CHINS process.¹²³ The Massachusetts Probation Service defines probation as a “court-ordered sanction placed on a person convicted of a crime.”¹²⁴ This is significant because it suggests that the Probation Department’s organizational ethos revolves around a presumption of criminal involvement, liability, and guilt of the vast majority of the department’s supervisees.¹²⁵ Probation officers provide the community with “protection and service through the enforcement of court orders and the investigation, supervision[,] and monitoring of offenders,” while also providing courts with “up-to-date information and recommendations.”¹²⁶ In 2009, probation officers supervised a total of 33,332 juveniles, including 13,838 CHINS supervisees.¹²⁷ Therefore, CHINS cases constituted over forty percent of the active juvenile probation supervisions for the year, and correspond to a massive expenditure of resources, time, and effort.¹²⁸

Unfortunately, the nature of the probation department makes it ill-suited for deployment in explicitly non-criminal settings, such as CHINS proceedings. The CHINS statutes require juvenile probation officers to perform initial evaluations of alleged CHINS, recommend rehabilitative services, and coordinate CHINS agreements between children and parents.¹²⁹ Meanwhile, the very same probation officer can essentially become an adverse party, responsible for investigating and monitoring the child’s behavior and compliance with CHINS orders and agreements, and recommending options to the court based on his investigative findings.¹³⁰ The absurd incompatibility of these two conflicting roles is readily apparent. Probation officers are first asked to serve as providers of rehabilitative treatment for wayward youth, which requires developing a relationship with the child premised on trust, confidence, and compassion. However, as the CHINS process progresses, the probation officers are forced to shatter and betray this fragile relationship as court-appointed investigators and accusers. It is this latter role that contaminates the CHINS system with the taint of a delinquency proceeding.

Publicized probation department initiatives describing cooperation with local

¹²² Kedia, *supra* note 17, at 543.

¹²³ See MASS. GEN. LAWS ANN. ch. 119, § 39E.

¹²⁴ *Massachusetts Probation Service Fact Sheet*, THE MASS. COURT SYS., <http://www.mass.gov/courts/probation/whatisprobation.html> (last visited Apr. 2, 2010).

¹²⁵ See *id.*

¹²⁶ THE MASS. COURT SYS., *supra* note 124.

¹²⁷ OFFICE OF THE COMM’R OF PROB., GENERAL STATISTICS, FISCAL YEARS 2008-2009 (2009), <http://www.mass.gov/courts/probation/2008-2009generalstats.pdf>.

¹²⁸ *Id.*

¹²⁹ See *supra* text accompanying notes 57-75.

¹³⁰ See *supra* text accompanying notes 52-70; see also THE MASS. COURT SYS., *supra* note 124.

school departments to combat truancy affirm the primacy of this adverse, investigative role, and the extent to which it overshadows probation's rehabilitative functions.¹³¹ One Juvenile Chief Probation Officer touted the value of school department cooperation to his officers, stating that "schools are where we can observe and collect important information on court-involved youth or those at risk of involvement in just one visit."¹³² Juvenile probation officers in Hampden County have an even easier time keeping track of CHINS supervisees through the public schools: officers can "verify attendance, behavior[,] and academic achievement" without even leaving the courthouse through a "direct computer link to the Springfield School System."¹³³ The dominance of probation's investigatory function over its role as a service provider means that children are likely to view any resulting repercussions as unfair and illegitimate punishments, breeding cynicism for the courts and the CHINS process, and shattering the trust necessary to effectively administer rehabilitative services.¹³⁴ Clearly the probation service is poorly suited to effectively participate in the CHINS process; an alternative agency or organization, with rehabilitation as its sole guiding principle, should be charged with taking over several responsibilities currently assigned to juvenile probation.

CHINS cases are often considered pre-delinquency matters and may even arise from the same nexus of events as criminal charges.¹³⁵ For example, a child who gets in a particularly vehement or threatening argument with a parent might face charges for delinquent assault and a CHINS petition for stubbornness at the same time.¹³⁶ In another plausible scenario, a child could get into a fight in the school cafeteria and kick a fellow student, or perhaps strike him with a lunch-tray. This single incident of adolescent misbehavior could have myriad consequences for the child: the potential for several delinquency charges, including assault and battery, assault and battery with a dangerous weapon, disturbing the peace and disrupting a school assembly, school imposed discipline in the form of a suspension or expulsion, and a CHINS petition alleging that he is a school offender.¹³⁷ Such impositions of duplicative judicial obligations, proceedings, and mandated rehabilitative services are unnecessarily burdensome, redundant, and potentially harmful to already troubled children. Furthermore, more than fifty percent of CHINS in Massachusetts are later

¹³¹ See Press Release, Office of the Comm'r of Probation, Juvenile Probation Officers Address Truancy (Oct. 3, 2005) (*available at* <http://www.mass.gov/courts/probation/pr100305.html>).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Carrion, *supra* note 17, at 366-67.

¹³⁵ Kedia, *supra* note 17, at 553.

¹³⁶ Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1146 (2006).

¹³⁷ See Susan F. Cole & M. Geron Gadd, *Uncovering the Roots of School Violence*, 34 NEW ENG. L. REV. 601, 609 (2000).

charged with criminal offenses, either in juvenile or adult court, and may find themselves back in the same courthouse facing far more serious allegations and consequences.¹³⁸

B. *The Absence of Effective Enforcement Mechanisms for CHINS Orders*

The protections against bootstrapping in Massachusetts, while essential to maintain the distinction of CHINS proceedings as purely non-delinquency proceedings, have the unfortunate side effect of leaving juvenile court justices without any legitimate, effective enforcement mechanisms for CHINS orders.¹³⁹ This is a major source of judicial frustration, towards both the legislators who wrote the statutes and toward the children that the statutes concern.¹⁴⁰ The CHINS statutes task judges with compelling youths to attend school, yet judges “have no tools to make a child comply with their orders.”¹⁴¹ This frustration leads to the threat of de-facto bootstrapping when previous disobeyers of CHINS orders re-enter the justice system for criminal offenses.

Even if a CHINS cooperates with a judge’s order, there is little guarantee that he will receive the necessary services to address the underlying root causes of his problems.¹⁴² Presumably, many of the highest-need children are ultimately transferred to temporary DCF custody. However, Massachusetts law limits judicial oversight of DCF decisions.¹⁴³ The abuse of discretion standard applies to determinations regarding children in DCF custody.¹⁴⁴ As such, these decisions are subject to an arbitrary and capricious standard of review.¹⁴⁵ Therefore, even if a judge determines that the services provided to a child in DCF custody pursuant to a CHINS case are inadequate, there is essentially no outside influence that can be brought to bear on the child’s behalf.¹⁴⁶ This is particularly problematic given the “wide gap” between the legal standards established for DCF care, protection, and services, and the “actual practices of the Department”¹⁴⁷

¹³⁸ *Commonwealth v. Florence F.*, 709 N.E.2d 418, 422 (Mass. 1999).

¹³⁹ *Id.* at 421.

¹⁴⁰ *Id.* at 421-22.

¹⁴¹ *Id.*

¹⁴² See Eleanor L. Wilkinson, Note, *Massachusetts Children in Need of Services: Trapped by the Legacy of Isaac and Jeremy*, 28 B.C. THIRD WORLD L.J. 239 (2008).

¹⁴³ *Id.* at 241.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 255-56 (citing Carrie Leonetti, *In the Interests of Children: The Role of the Massachusetts Department of Social Services in Private Custody Proceedings*, 10 AM. U. J. GENDER SOC. POL’Y & L. 67, 92 (2001)).

C. *The Disproportionate Impact on Vulnerable Youth*

Several factors combine to place status offenders at a disadvantage in the juvenile justice system.¹⁴⁸ CHINS cases typically arise not from “one isolated incident or behavior but [from] a pattern of different types of acting out over a period of time[,]” and most CHINS youth must deal with “a wide range of personal issues and behavior problems” which require attention, but are unlikely to have been previously addressed.¹⁴⁹ Status offense jurisdiction is commonly characterized as a way for low-income families to deal with unruly children by enlisting the intervention and support of the state.¹⁵⁰ Middle and upper class households that can afford private resources, such as counseling, typically pursue these avenues over the court system; therefore, children from poorer families are far more likely to enter juvenile court on a CHINS matter than children from higher income demographics.¹⁵¹ Additionally, anecdotal evidence and the experience of practitioners suggest that minority children and children of color are overrepresented in juvenile court status offense cases, though this may be a reflection of the overrepresentation of minorities in lower income brackets.¹⁵² Juvenile courts subject disadvantaged youths to more extensive controls through their exercise of *parens patriae* authority, as society’s marked racial and economic inequalities render “minority youths . . . most ‘in need’ and therefore most ‘at risk’ of juvenile court intervention.”¹⁵³ The numerous defects that inhibit CHINS statutes’ practical efficacy render these disparities particularly significant; if CHINS’ operation truly works in opposition to its intended goals, the effects of this disproportionate minority contact can be invidious and pervasive.

Status offenders often also suffer from various mental health and learning disorders, with implications closely tied to class and race issues.¹⁵⁴ Many behaviors associated with mental health conditions, emotional disorders, and learning disabilities contribute to delinquent and status offending acts, particularly when left untreated.¹⁵⁵ Poor children and children of color are considerably less likely to be diagnosed with such disorders prior to involvement with the juvenile justice system, which may further contribute to their overrepresentation in status offense proceedings.¹⁵⁶ Because these disorders are unlikely to

¹⁴⁸ Humphrey, *supra* note 20, at 172.

¹⁴⁹ OFFICE OF THE COMM’R OF PROB., IN JEOPARDY AND AT RISK: CHINS CASES IN MASSACHUSETTS 4 (1998).

¹⁵⁰ Kedia, *supra* note 17, at 551-52.

¹⁵¹ *Id.*

¹⁵² Howard Davidson, *Introduction by Special Issue Editor*, 45 FAM. CT. REV. 350, 351 (2007).

¹⁵³ Feld, *supra* note 1, at 250.

¹⁵⁴ Rashmi Goel, *Delinquent or Distracted? Attention Deficit Disorder and the Construction of the Juvenile Offender*, 27 LAW & INEQ. 1, 3 (2009).

¹⁵⁵ *Id.* at 28.

¹⁵⁶ *Id.* at 29.

be diagnosed, they may not come to the attention of probation officers at the intake and evaluation stages.¹⁵⁷ This can lead to probation officers having an unjustifiably negative perception of the child and his repeated instances of misbehavior.¹⁵⁸ Ultimately, this negative perception will ensure that the child does not receive necessary services and guarantees that the root causes of his behavioral issues go untreated and unresolved.¹⁵⁹ Unfulfilled educational needs, resulting in low self-esteem, deficient social skills, and low intelligence, are also considered major contributing factors, particularly in the case of truant status offenders.¹⁶⁰

One feature common to most CHINS cases is family dysfunction: often parents are “the ones who turn” children in for status offenses, and even if the parent does not initiate the proceedings, it is likely that the filing of the petition establishes a “conflicting relationship” between the parent and child.¹⁶¹ There is also a correlation between single parenting and propensity for children to commit status offenses.¹⁶²

Abusive family environments are related to higher rates of status offending in both boys and girls.¹⁶³ Traumatic childhood experiences, such as domestic violence or sexual abuse, often manifest in the child as violent, disruptive, or defiant behavior in school and at home.¹⁶⁴ Female status offenders are especially vulnerable to negative outcomes, both legally and personally, from their experiences with juvenile court status offense jurisdiction.¹⁶⁵ For females, victimization, sexual abuse, and family dysfunction often lead to status offenses, particularly in runaway cases.¹⁶⁶ Efforts to treat traumatized children are more effective when they occur in a “developmentally appropriate environment that encourages normalcy and minimizes stigma.”¹⁶⁷ A courtroom does not meet any of these criteria. Furthermore, female status offenders must face the

¹⁵⁷ Joseph B. Tulman, *Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System*, 3 WHITTIER J. CHILD & FAM. ADVOC. 3, 53 (2003).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 54.

¹⁶⁰ Kedia, *supra* note 17, at 554.

¹⁶¹ Humphrey, *supra* note 20, at 172.

¹⁶² Lynn D. Wardle, *The Fall of Marital Family Stability and the Rise of Juvenile Delinquency*, 10 J.L. & FAM. STUD. 83, 91 (2007).

¹⁶³ Humphrey, *supra* note 20, at 176-77.

¹⁶⁴ Cole & Gadd, *supra* note 137, at 601.

¹⁶⁵ Humphrey, *supra* note 20, at 172.

¹⁶⁶ *Id.* at 172, 175-76.

¹⁶⁷ Cole & Gadd, *supra* note 137, at 609 (quoting Betty Pfefferbaum, *Posttraumatic Stress Disorder in Children: A Review of the Past 10 Years*, 36 J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 1503, 1509 (1997)) (emphasis omitted).

courts' inherent sexist and paternalistic biases.¹⁶⁸ The glaring reality is that the CHINS system further burdens the most vulnerable juvenile populations. The statutes harm those whose need for potentially beneficial government-provided services is greatest. This is one of the most compelling arguments for embarking on an unflinching reexamination and reform of status offense jurisdiction in Massachusetts.

D. *A Misguided Approach to Adolescent Misbehaviors*

As currently formulated, the CHINS system is an inherently flawed and misguided approach to the challenges presented by youth misbehavior. Adolescence is a period of "rebellion, turmoil, and increasing conflict with parents [T]he teenage years are a time where it is both normal and normative to be deviant" ¹⁶⁹ Western culture understands and celebrates adolescence as a time of "'ungovernability' and 'habitual disobedience[,]'" yet CHINS status offense jurisdiction punishes adolescents for what society accepts as age appropriate behavior.¹⁷⁰ The dividing line between deviant defiance and typical teenage behavior is essentially indistinguishable; thus, factors outside of the individual behaviors in question often determine which children are subject to CHINS proceedings.¹⁷¹ Youth misbehavior can be rooted in a vast array of causes from exposure to violence and abuse to "feelings of vulnerability masked by a façade of willful defiance and disregard" for others.¹⁷² Furthermore, there is much debate over whether the juvenile court's coercive imposition of services in status offense cases actually benefits the youths involved.¹⁷³ As one commentator notes, "[Y]ou do not want to keep children in school under threat of incarceration. You want to get to the root of their problem as well, which may be neglectful parents, or social workers who are not looking after them."¹⁷⁴ CHINS statutes focus too much on correcting behavior and not enough on the root of children's problems and on providing appropriate services.

The CHINS statutes reflect a dearth of meaningful appreciation for biological, psychological, and behavioral traits considered nearly universal to the adolescent experience. Antisocial behavior is a *fairly predictable part of adolescence*, and adolescents differ from adults in their cognitive capacity and psychosocial development, particularly with respect to factors such as conform-

¹⁶⁸ Humphrey, *supra* note 19, at 167.

¹⁶⁹ Randy Frances Kandel & Anne Griffiths, *Reconfiguring Personhood: From Ungovernability to Parent Adolescent Autonomy Conflict Actions*, 53 SYRACUSE L. REV. 995, 1040-41 (2003).

¹⁷⁰ *Id.* at 1040.

¹⁷¹ *Id.* at 1041.

¹⁷² Cole & Gadd, *supra* note 137, at 601.

¹⁷³ Karl F. Dean, *Criminalization of Truancy*, 34 NEW ENG. L. REV. 589, 592 (2000).

¹⁷⁴ *Id.*

ity, acceptance and perception of risk, and temporal perspective—the ability to meaningfully perceive and understand the future consequences of current behavior.¹⁷⁵ Most teenagers engage in limited delinquency during adolescence and then discontinue criminal behavior as they mature and transition to adulthood; some commentators consider transient delinquency a normal aspect of adolescent life.¹⁷⁶ If some degree of teenage delinquency is considered normal, then clearly the less severe behaviors that give rise to CHINS petitions should not require state intervention.¹⁷⁷ Certain undeniable truths exist in this world: dogs bark, the sun rises in the East, and teenagers will act out, misbehave in school, disobey their parents, and even break a law or two on occasion. The state must proceed with utmost caution when it exercises power in an effort to curb adolescent misbehavior, lest it unnecessarily interfere with a child's perfectly normal maturation and development, unintentionally exacerbate or initiate behaviors that would likely dissipate naturally, and ultimately work against the child's best interests.

V. *PARENS DOES NOT KNOW BEST: HOW THE PRACTICAL OPERATION OF CHINS CONTRADICTS THE CHILD'S BEST INTEREST JUSTIFICATION*

A. *The Introduction of Truants, Runaways, and Stubborn Children to the Juvenile Court Can Do More Harm Than Good*

It is unclear whether statutory status offense schemes can effectively achieve their goals, but the ability to achieve effective resolutions depends on the availability of social services and the court's ability to impose obligations on the parties.¹⁷⁸ In Massachusetts, it seems that the harms imposed by CHINS proceedings, the “stigma, victimization, and criminalization of young people,” may very well outweigh the system's benefits.¹⁷⁹ One readily apparent feature of CHINS cases is that “the court process itself, whenever families step into it, hinders the treatment rationale” underlying the statutory status offense scheme.¹⁸⁰ The CHINS process and adjudication formally labels children as destined for delinquency and reinforces children's negative self-perceptions.¹⁸¹

¹⁷⁵ Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 154, 157-62 (1997).

¹⁷⁶ *Id.* at 154-55.

¹⁷⁷ *Id.* at 154.

¹⁷⁸ Mark H. Moore & Stewart Wakeling, *Juvenile Justice: Shoring up the Foundations*, 22 CRIME & JUST. 253, 266 (1997).

¹⁷⁹ Bernardine Dohrn, “I’ll Try Anything Once”: *Using the Conceptual Framework of Children’s Human Rights Norms in the United States*, 41 U. MICH. J.L. REFORM 29, 51 (2007).

¹⁸⁰ Robert A. Baruch Bush et al., *Supporting Family Strength: The Use of Transformative Mediation in a PINS Mediation Clinic*, 47 FAM. CT. REV. 148, 153 (2009).

¹⁸¹ *Id.*

Research demonstrates that punitive approaches to youth misbehavior fail to reduce recidivism and can negatively impact long-term problem solving efforts.¹⁸² Also, the adversarial nature of CHINS proceedings may further aggravate family conflicts.¹⁸³

CHINS proceedings all too often exacerbate the problems they were intended to resolve. Labeling children as “in need of services” can become a self-fulfilling prophecy, leading to future problematic encounters with the law.¹⁸⁴ Stigmatization, however, is only part of this problem. Bad experiences with CHINS proceedings can color youths’ perceptions of the juvenile justice system, inspiring cynicism, contempt, and disregard for the law and judicial authority, which is altogether “counterproductive” to the achievement of CHINS statutes’ rehabilitative goals.¹⁸⁵ CHINS who are confused as to the non-criminal nature of the proceedings or who encounter the impotence of judicial enforcement of CHINS orders may come to view the system as altogether illegitimate, which further breeds contempt for the law.¹⁸⁶

B. *Objective Evidence of Systematic CHINS Failure*

The available data reveals that at best the CHINS system’s practical operation falls spectacularly short of its goals, and at worst may have the actual effect of directly contravening its foundational purpose. Unfortunately, the last comprehensive system-wide analysis of CHINS case data was conducted in 1998, but there is little reason to think that its findings would not equally apply today.¹⁸⁷ The study monitored all 6,548 juveniles subjected to CHINS proceedings in 1994, the first year CHINS cases were entered in the automated probation database, and followed the children for three years to track subsequent court involvement.¹⁸⁸ The findings are disturbing.¹⁸⁹ Supporters argue that CHINS jurisdiction is necessary and justified to intervene in the lives of troubled children before they become delinquents, to impose rehabilitative services, and to dissuade the child from future criminality.¹⁹⁰ Sadly, there is dreadfully little objective evidence to support this claim.¹⁹¹

The statistics clearly demonstrate the ineffectiveness of CHINS intervention.¹⁹² Nearly twenty-four percent of CHINS have prior delinquency records,

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See Carrion, *supra* note 17, at 366-67.

¹⁸⁵ See *id.* at 367.

¹⁸⁶ *Id.*

¹⁸⁷ OFFICE OF THE COMM’N OF PROB., *supra* note 149, at 1.

¹⁸⁸ *Id.* at 3.

¹⁸⁹ See *id.*

¹⁹⁰ See Grace, *supra* note 11, at 646.

¹⁹¹ See generally OFFICE OF THE COMM’N OF PROB., *supra* note 149; Vincent D. Basile, *Getting Serious About Corrections*, 69 FED. PROBATION 29, 29-30 (2005).

¹⁹² See OFFICE OF THE COMM’N OF PROB., *supra* note 149, at 2.

and likely a corresponding disdain for the juvenile court's involvement in their lives.¹⁹³ Approximately twenty-three percent of the children studied faced subsequent CHINS allegations within three years, often for repeating the same behaviors that led to the initial CHINS involvement.¹⁹⁴ One statistic stands alone as the study's most important and distressing discovery: 54.3% of CHINS face arraignment on either delinquency or criminal charges within three years.¹⁹⁵ This includes an "overwhelming" 68.2% of the males.¹⁹⁶ Since CHINS cases typically deal with juveniles who ideally should be attending school,¹⁹⁷ it makes sense to evaluate the CHINS system's success in familiar terms.¹⁹⁸ A student who succeeds approximately forty-five percent of the time will consistently receive F's on his report card; the current CHINS system is similarly failing. A failing student will be evaluated for learning disabilities, and given tutors, extra help, and special attention. The CHINS system requires analogous legislative assistance in order to improve its performance.

The CHINS scheme should act as a bulwark against future involvement with the justice system; instead, the system represents the junior-varsity equivalent of delinquency and adult criminal courts. Tragically, many current players seem destined for the varsity squad. Reform is required, and an important step is the regular collection of CHINS data.¹⁹⁹ Up-to-date information is necessary to assess the current scope of the CHINS system's problems, to direct limited state resources, and to maximize the effectiveness of CHINS interventions.²⁰⁰ Furthermore, a consistent commitment to perform "complete and comprehensive" collection and analysis of CHINS data will allow stakeholders to accurately assess the system's performance and measure relative improvement.²⁰¹

One commentator suggests that the justice system should adopt a corporate executive's approach to system accountability and not measure success "simply by output, but rather by the quality of the outcome."²⁰² Unfortunately, Massachusetts currently "fails to collect the basic statistical data it needs to understand how its juvenile justice system is operating. . . . [I]t is blindly funding a system without the metrics to assess either its fairness or effectiveness."²⁰³ While methodical and extensive reforms are necessary to truly address the

¹⁹³ *Id.* at 6.

¹⁹⁴ *Id.* at 7-8.

¹⁹⁵ *Id.* at 10.

¹⁹⁶ *Id.*

¹⁹⁷ *See id.* at 5-6.

¹⁹⁸ *See* CITIZENS FOR JUVENILE JUSTICE, A REPORT CARD ON CHINS IN MASSACHUSETTS 5, 20 (2000), <http://www.cfjj.org/Pdf/CHINS.pdf>.

¹⁹⁹ *See id.* at 16-17; OFFICE OF THE COMM'N OF PROB., *supra* note 149, at 14.

²⁰⁰ *See* CITIZENS FOR JUVENILE JUSTICE, *supra* note 198, at 16-17.

²⁰¹ Basile, *supra* note 191, at 29-30.

²⁰² *Id.* at 30.

²⁰³ CITIZENS FOR JUVENILE JUSTICE, "JUST FACTS" FACT SHEET 1 (2009), <http://www.cfjj.org/Pdf/CfJj%20Just%20Facts%20Fact%20Sheet%203.30.09.pdf>

CHINS system's underlying problems, regular data collection is equally imperative. There is not a single academic study that shows that "status offenders are better off because of court supervision."²⁰⁴ In fact, the opposite conclusion appears far more plausible: future criminal activity of status offenders "may be caused by court intervention rather than prevented by it."²⁰⁵ Without objective evidence of the CHINS system's success, the underlying justification for the state's exercise of *parens patriae* authority strays dangerously from the protection of a child's best interests to a disturbingly parochial "because I told you so" parental cop-out.

VI. PROPOSED REFORMS

There is no single solution for resolving the deficiencies inherent in Massachusetts's CHINS jurisdiction. Many commentators contend that juvenile court status offense jurisdiction should be altogether abolished.²⁰⁶ However, the practical implications of such drastic action require the establishment of an extensive network of well-funded, community-based services prior to the abolition of status offense jurisdiction, so that at-risk youth retain access to needed services.²⁰⁷ Thus, while the eradication of CHINS jurisdiction may be desirable for a number of reasons, it is simply not a practical option at the current time. Instead, the legislature must act swiftly to reform the CHINS system by directly addressing its underlying deficiencies.

Successful reform requires reducing the role of juvenile courts, juvenile judges, and probation in the CHINS process, the normalization of status offense procedures, and an emphasis on pre-trial diversion. In addition, reform requires an expansion of community-based services, a re-commitment to rehabilitation, and a concerted effort to better understand, communicate with, and deal openly with troubled youth.²⁰⁸ Commentators argue for a holistic approach to each individual's "criminogenic needs" at the initial exposure to the court system.²⁰⁹ This recommendation is particularly important with respect to the CHINS system because for nearly seventy-five percent of CHINS juveniles, a CHINS proceeding marks their first involvement with the juvenile justice system.²¹⁰ Improving "service delivery to CHINS youth" must be a central focus, and this requires careful, thorough, and detailed assessments of all CHINS upon entry to

²⁰⁴ Kedia, *supra* note 17, at 562.

²⁰⁵ *Id.*

²⁰⁶ Alexander, *supra* note 4, at 608; CITIZENS FOR JUVENILE JUSTICE, *supra* note 198, at 9.

²⁰⁷ Alexander, *supra* note 4, at 608.

²⁰⁸ See *supra* text accompanying notes 36-42, 120-138, 148-169.

²⁰⁹ Basile, *supra* note 191, at 29.

²¹⁰ *Id.*; OFFICE OF THE COMM'N OF PROB., *supra* note 149, at 14; Grace, *supra* note 11, at 648.

the system, so that appropriate treatment is sought as soon as possible.²¹¹ Finally, a successful holistic approach requires increased funding and community-wide coordination, cooperation, and communication.²¹² “Neither the court, nor the schools, nor social welfare organizations can by themselves successfully handle CHINS kids and their diversity of problems;” therefore, CHINS interventions “must be a unified and coordinated effort” if they hope to actually “help the CHINS population.”²¹³ Judge Baker’s vision for the juvenile court as a hub through which all the community’s resources could be coordinated and utilized for the benefit of its children remains relevant today.²¹⁴

Once necessary improvements are in place, the state must purposefully publicize the CHINS option to parents seeking assistance and services for their children, school administrators fed up with disruptive class clowns, and police officers who encounter troubled youth on patrol. Knowledge about the CHINS system could be the difference between a child going before the juvenile court on a delinquency complaint or a CHINS petition.²¹⁵ Fed up parents often call the police on their children, and judges “in appropriate cases are willing to reject logic for experience[.]” preferring to divert a borderline delinquency charge to the status offense courts.²¹⁶ Rather than focus on the types of rehabilitative services that the CHINS system should employ, this Note proposes reforms that fundamentally alter the underlying CHINS system to counteract entrenched and persistent core defects. Whether adopted jointly or severally, the following recommendations represent practical measures that promise to substantially improve future operations and outcomes of the Massachusetts CHINS system.

A. *Decrease the Role of Juvenile Judges and Probation*

A crucial first step towards reform requires reducing the roles of juvenile judges and the court probation department in the CHINS process, especially in its preliminary stages. Practically, this reform would decrease the appearance of the CHINS system as a criminal or delinquency proceeding. The CHINS process should begin informally in a non-adversarial context in order to improve youths’ initial reactions to the system, avoid stigmatization, and improve family communication.²¹⁷ Normalizing the proceedings in this way and treating adolescent misbehavior as a transient, age appropriate phenomenon will

²¹¹ Basile, *supra* note 191, at 30.

²¹² *See id.* at 31; Grace, *supra* note 11, at 647.

²¹³ OFFICE OF THE COMM’N OF PROB., *supra* note 149, at 13.

²¹⁴ *See supra* text accompanying notes 38-44.

²¹⁵ *See supra* text accompanying notes 135-138.

²¹⁶ Marsha L. Levick & Robert G. Schwartz, *Changing the Narrative: Convincing Courts to Distinguish Between Misbehavior and Criminal Conduct in School Referral Cases*, 9 U.D.C. L. REV. 53, 64 (2007).

²¹⁷ Bush et al., *supra* note 180, at 153-54.

result in more favorable outcomes than the official procedures and avoid negative labels inherent in the current system.²¹⁸ Children and families should have a chance to work out their problems and access community services without a judge or probation officer looking on as an ever-present big brother figure.

Removing juvenile courts from the initial stages of the CHINS system would have multiple benefits. First, this reform favors judicial economy as it would greatly reduce the burden on juvenile judges' dockets. CHINS cases, due to their high numbers and "intensive" procedural and substantive requirements "utilize a vast amount of the resources of the juvenile courts."²¹⁹ These resources can go to other glaringly underfunded areas of the court system or even toward establishing and maintaining the program that assumes the functions currently charged to juvenile judges and probation officers. Second, and more importantly, removing the juvenile courts from the CHINS system's initial stages reduces the taint and stigma of juvenile court involvement as children will not be mired in court proceedings from the first instance that they are alleged to be a CHINS. The juvenile court likely has an important role to play in many cases, although it would benefit from some legitimate and effective means of enforcement. Therefore, it must remain part of the CHINS process, but used primarily as a last resort.

Probation officers' extensive involvement in the current CHINS system is particularly troubling, given that they play a major role in CHINS intakes, evaluations, service provisions, and post-adjudicative monitoring. All too often, probation officers embody the "pervasive (and perverse) mindset of the delinquency system that emphasizes containing, rather than empowering, children."²²⁰ This can lead to probation officers erroneously attributing CHINS' failures to communicate clearly, control their behavior, cooperate in school, or meet court-imposed obligations as evidence of defiance, disrespect, and a negative attitude, while overlooking other common explanations, such as educational disabilities, psychological trauma from past abuse, or simply a lack of self-confidence.²²¹ Probation officers often have negative, though largely incorrect, opinions of children that they then report on to the judge, and in turn these children will not be able to access the services they desperately require.²²² There are few mechanisms available to compel "proactive work" by probation officers on behalf of CHINS youth.²²³ The new system should minimize the role of probation officers to the degree where such entrenched attitudes cannot harm vulnerable children. The function of probation officers in the CHINS system should be transferred to parties outside the criminal justice system.

²¹⁸ *Id.*

²¹⁹ OFFICE OF THE COMM'N OF PROB., *supra* note 149, at 13.

²²⁰ Tulman, *supra* note 157, at 54.

²²¹ *Id.* at 42.

²²² *Id.* at 53-54, 56.

²²³ *Id.* at 58-59.

B. *Put Some Youth on the Other Side of the Juvenile Court*

The legislature, working closely with courts and community stakeholders, must establish a new scheme to fill the void the juvenile court and probation department leave in the initial stages of CHINS proceedings. Perhaps the most effective path to reform could come from outside the realm of current state agencies. It is time to start from scratch and establish a new mechanism for CHINS intake, initial diversion, evaluation, and referral to services. This Note proposes establishing a “Teach for America” style program to fill this gap.²²⁴ This proposed system would allow traditional probation departments to focus primarily on delinquency and criminal cases, relieving docket pressure in the juvenile courts, and ultimately establish a more effective approach to deal with non-delinquent, misbehaving youth.

The program would operate with the assistance of court clinics and probation departments, but would also have its own separate administration and supervisory staff. Like Teach for America, this program would selectively recruit highly-educated and passionate individuals, who have interests in public service, law, public policy, mental health, counseling, child development, psychology, and a diverse array of related fields for two-year positions as CHINS counselors. Teach for America exemplifies the potential potency of employing passionate recent college graduates, primarily young adults, to get through to youth: recent studies show that Teach for America teachers outperformed veteran and certified teachers in the same schools, as measured by student performance.²²⁵ It is common knowledge that “the teenage years are arguably life’s low-point for liking or listening to adults.”²²⁶ Using recent college graduates as the face of the CHINS system has many benefits. For instance, such candidates may be better able to relate to younger children due to their own relative youth, and this commonality of shared experience will help foster communication with CHINS youth and bridge the gap between adolescent rebellion and adult expectations.²²⁷ Also, program counselors will be less disillusioned and jaded than typical veterans of probation departments and juvenile courts. While the probation department’s expertise may still prove useful in the new system, particularly in an investigative role, probation officers should not participate in CHINS intake, evaluation, or counseling, and should have as little direct contact with the CHINS subject as possible.

Program counselors would begin by undergoing a comprehensive, semester-long training program, including courses in local juvenile law and status of-

²²⁴ See *Our Mission and Approach*, TEACH FOR AMERICA, http://www.teachforamerica.org/mission/mission_and_approach.htm (last visited Apr. 22, 2010).

²²⁵ *Corps Member Impact, Testing Teach for America*, TEACH FOR AMERICA, fig. 1, http://www.teachforamerica.org/mission/our_impact/corps_impact.htm (last visited Apr. 24, 2010).

²²⁶ See Tulman, *supra* note 159, at 42.

²²⁷ See *id.*

fenses, the justice system generally, psychology, counseling, mediation, dispute resolution, and communication strategies. They would also receive specific information about various available social services, special schools, after-school programs, recreational sports, and vocational programs. Under the supervision of specially-selected lawyers, psychiatrists, former probation officials, and social workers, the recruits would handle a majority of the probation department's current role both pre- and post-adjudication. Program counselors should be paired with experienced mental health professionals to perform comprehensive intake evaluations, thus ensuring that disabilities and other overarching issues are identified and treated as quickly and effectively as possible. These professionals should keep in contact with the counselors and should monitor the child's psychological state throughout the process.

The new system's primary goal would be to fashion informal resolutions and recommend available social service options based on individualized evaluations of each child and family without requiring the child or the family to ever set foot in a juvenile courtroom. Counselors with complementary interests and backgrounds would work in teams and report to program supervisors and the court, with progress evaluations and dispositional recommendations for their cases. The court would ultimately make the decision of whether to proceed with CHINS litigation, but only after reviewing a report or recommendation from a child's assigned team of counselors and professionals. Probation officers should not report the results of compliance monitoring investigations to the judge directly, but instead to the program team for the child. The team could then consider the probations department's findings and recommendations along with their own experiences and interactions with the CHINS child, and prepare a report for the judge with a consensus recommendation.

Incorporating young adult counselors into an active role with the juvenile court will soften the harshness of the proceedings on children, create a stark visible distinction between delinquency and CHINS proceedings, and improve the overall quality of CHINS outcomes by fostering trust and communication. The reconfigured system would give the child the impression that someone involved in the process is on his or her side, and not just interested in inflicting punishment. Most importantly, CHINS who are more comfortable interacting with passionate counselors in their early twenties through early thirties may also be more willing to fully engage in the recommended services, thus increasing the chances of therapeutic success.

C. *Civil Fines as a Valid and Effective Enforcement Mechanism*

Currently juvenile judges lack any viable means to enforce compliance with CHINS orders, a shortcoming often credited for ensuring the ineffectiveness of the current statutory scheme.²²⁸ A system of civil fines, similar to traffic tickets, imposed on juveniles who violate CHINS orders, can provide a valid and

²²⁸ See *supra* text accompanying notes 107-10, 125.

effective enforcement mechanism. Massachusetts is particularly well-suited to adopt such an approach from both a legal and practical perspective. In 2009, the SJC upheld the constitutionality of civil fines to enforce a Lowell ordinance that created an additional juvenile status offense outside the scope of the CHINS system: a citywide youth curfew.²²⁹ Furthermore, on November 4, 2008, the Massachusetts electorate decriminalized the possession of up to an ounce of marijuana, with disparate civil penalties imposed on juvenile and adult transgressors, indicating public support for the use of civil fines to compel juvenile behavior.²³⁰ Borrowing principles from the aforementioned systems, a similar scheme of civil penalties could incentivize youths to abide by their CHINS orders and prove particularly useful in cases where counseling or therapy services are imposed.

The SJC, in *Commonwealth v. Weston W.*, upheld civil fines as a valid enforcement mechanism for juvenile status offenders and suggested that such fines can act as valuable deterrents of youth misbehavior.²³¹ Lowell's "Youth Protection Curfew For Minors" required minors under the age of seventeen to be at home between 11 p.m. and 5 a.m., subject to numerous exceptions, and the ordinance is enforceable through arrests, criminal complaints, or fines.²³² The court struck down the ordinance's criminal penalty provisions as unconstitutional, stating that the "criminal prosecution of a minor, with its potential for commitment to DYS, is an extraordinary and unnecessary response to what is essentially a status offense, and is contrary to the State's treatment of similar conduct."²³³ The court upheld the civil enforcement mechanism, declaring it "reasonable, balanced, and narrowly tailored, especially in light of the government's need for flexibility when acting to protect children."²³⁴ In addition, the court noted that the civil fines system is a sufficient deterrent, consistent with the state's goals for the treatment of juvenile status offenders, and that it achieves its goals "without creating a juvenile 'record'"²³⁵ A CHINS civil enforcement mechanism must meet all of these criteria. It should impose minimal restrictions, but still apply some degree of state coercion to ensure that at-risk children receive services they may desperately need.

Additional support for this type of civil enforcement approach appears in a recent voter initiative that decriminalizes the possession of less than one ounce

²²⁹ *Commonwealth v. Weston W.*, 913 N.E.2d 832, 844-45 (Mass. 2009).

²³⁰ MASS. GEN. LAWS ANN. ch. 94C, §§ 32L-32N (West 2008); An Act Establishing A Sensible Marihuana Policy, St. 2008, ch. 387, § 2 (codified as amended at MASS. GEN. LAWS ANN. ch. 94C, §§ 32C, 32L, 32N (West 2008)).

²³¹ See *Weston W.*, 913 N.E.2d at 836, 844.

²³² *Id.* at 835.

²³³ *Id.* at 845.

²³⁴ *Id.* at 844.

²³⁵ *Id.*

of marijuana in Massachusetts.²³⁶ The adult penalty for possession of one ounce or less of marijuana is a \$100 fine and forfeiture of the substance.²³⁷ Juvenile marijuana users are subject to far more onerous obligations under the statute's two-tiered penalty scheme. Violators under the age of eighteen are also subject to the \$100 fine and forfeiture but, in addition, their parents receive notification of the offense and the child must complete a drug awareness program within one year, otherwise the fine escalates to \$1,000.²³⁸ The violator's parents are jointly and severally liable for payment of the fine.²³⁹ The required drug awareness program consists of four hours of classroom instruction on the dangers of substance abuse, as well as ten hours of mandatory community service.²⁴⁰ As a purely civil offense, no information concerning violations is entered in any criminal record or criminal information database.²⁴¹

A CHINS enforcement mechanism modeled on these principles would be an effective solution to juvenile judges' difficulty incentivizing children to obey their CHINS orders. CHINS should be given six months to show meaningful and substantial efforts to comply with CHINS orders, before they are subjected to fines. Fines can escalate based on repetition and the severity of the child's behavior, and parents should be held liable when there is evidence suggesting they are responsible for any violations. Fines should not be imposed for single violations, such as a missed counseling appointment or a few cut classes, but rather should be used to induce a general pattern of cooperation. Finally, violations resulting in fines and possible subsequent failures to pay must not be entered on the juvenile's record to protect juveniles from de-facto bootstrapping should he or she be subject to subsequent criminal or delinquency proceedings.

As with any newly proposed system, several shortcomings will require attention and mitigation. First, in the case of indigent CHINS, who will be on the hook for the fine? If neither the child nor the parent can afford to pay, such a system could unfairly punish parents and chill their desire to seek services through court intervention. This could be beneficial to deter parents who may unnecessarily drag a child into a CHINS case out of frustration, but in more serious cases, the threat of fines could compel parents to request help from the delinquency system instead of seeking out sorely needed services. Legislators must ensure that any new enforcement mechanism does not simply saddle children with debt they will never be able to repay, creating compounding problems and obligations. Otherwise, the new legislation will be little more

²³⁶ An Act Establishing A Sensible Marijuana Policy, St. 2008, ch. 387, § 2 (codified as amended at MASS. GEN. LAWS ANN. ch. 94C, §§ 32C, 32L, 32N (West 2008)).

²³⁷ MASS. GEN. LAWS ANN. ch. 94C, § 32L.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* § 32M.

²⁴¹ *Id.* § 32L.

than the statewide equivalent of taking a hammer to one's knee to cure a splitting headache.

So what if CHINS refuse to pay? Contempt and other criminal or delinquency based options are not available, nor would they be desirable in this context.²⁴² Instead, children must have the option of performing community service to pay their fines, ideally through school-based or after-school programs. The denial of other privileges, such as a driver's license, may be desirable as a last resort, but it is a slippery slope away from the least restrictive means possible to excessive punishment.²⁴³ Ultimately, even the use of civil fines to enforce CHINS orders may not prove helpful. Involuntary participation in services seems unlikely to provide meaningful results and prohibitions on bootstrapping and criminal dispositions in CHINS cases means that little can be done to compel the most obstinate CHINS kids. However, if judges see that a higher percentage of their CHINS orders are being obeyed and enforced, their frustration with the system will likely decrease, minimizing the danger of de-facto bootstrapping. While a system of civil fines may not be a perfect solution, it is a viable method that would improve on the current CHINS system.

VII. CONCLUSION

Despite having one of the more progressive juvenile status offender schemes in the nation, Massachusetts's CHINS statutes are fraught with serious defects that undermine their original intent. Rather than addressing and ameliorating factors that lead to behaviors that subject juveniles to CHINS jurisdiction, introducing these already vulnerable youths to the juvenile court system leads to stigmatization and labeling, imposes restrictions without an adequate enforcement mechanism, exposes youths to the danger of de-facto bootstrapping, and disproportionately affects the most disadvantaged juvenile populations. The status quo in Massachusetts's CHINS system clearly is not effective at staving off future delinquency. More importantly, it may significantly exacerbate many youths' behavioral problems and lead to a greater, rather than diminished, likelihood of future delinquency or criminality.

The entire CHINS system, from its foundational statutes to its practical daily operation in the juvenile courts, must be re-evaluated and substantively reformed. For such revisions to succeed, they must reduce the prominent role of juvenile judges, probation officers, and the juvenile courts throughout the CHINS process. Reforms must emphasize the importance of providing educational, psychological, and social assistance to CHINS and their families on a situational and individualized basis. Finally, any successful reform must account for the fundamental differences in development, maturity, psyche, and intelligence between youths and adults. The juvenile courts and their officers should only be called upon in a CHINS case as a last resort. Instead, legislators

²⁴² See *Commonwealth v. Weston W.*, 913 N.E.2d 832, 845-47 (Mass. 2009).

²⁴³ See *id.*

and stakeholders should work to establish a new agency or community service organization to replace the initial roles of judges and probation officers. This agency should strive to recruit intelligent, highly-motivated recent college graduates with diverse backgrounds and interests. Establishing youthful and zealous counselors as the face of the CHINS system, rather than the intimidating institutional presence of the juvenile court, would create a more comfortable environment, inspire CHINS to trust and cooperate with the system, and foster greater communication between CHINS, their attorneys, and the court.

Finally, judges must have an effective means for enforcing CHINS orders. A system of civil fines, premised on the 2008 statewide marijuana ballot initiative, could provide juvenile judges with a valid and effective enforcement mechanism for CHINS orders. Furthermore, the revised CHINS statutes should mandate data collection on status offenders to facilitate assessing the program and making timely changes when needed.

Current CHINS proceedings are the training wheels of the juvenile justice system. They allow youths to ease their way up to the criminal courts, without facing any dire consequences along the way. Once a former CHINS reaches the next rung in the court hierarchy and is subject to a delinquency or criminal complaint, the training wheels come off, and with them goes the safety net provided by the CHINS system's non-criminal nature. Like most children who are unprepared for that first big ride, many former CHINS fall down hard over their subsequent criminal matters. Even worse, in criminal court, a defendant can hardly benefit from experience. While children may learn to ride a bike over time at the cost of a bump here, a bruise there, and a few skinned knees, former CHINS who come back before the court on criminal matters are unlikely to ever have a chance to learn from their mistakes and the wounds they receive can take a lifetime to heal.