September 16, 2015

Senator William N. Brownsberger, Senate Chair  
Joint Committee on the Judiciary  
Massachusetts State House, Room 504  
Boston, MA 02133

Representative John V. Fernandes, House Chair  
Joint Committee on the Judiciary  
Massachusetts State House, Room 136  
Boston, MA 02133

Dear Chairman Brownsberger and Chairman Fernandes,

Thank you for the opportunity to testify in opposition to Senate Bill 793, An Act Relative to Clarifying Procedures for the Custodial Protection of Children Requiring Assistance. The Children’s League of Massachusetts (CLM) is an ever-growing statewide non-profit association of over 80 private and public organizations and individuals that collectively advocate for public policies and quality services that are in the best interest of the Commonwealth’s children, youth and families. It is through public education and advocacy that CLM promotes the availability, accessibility, and quality of these services.

Our members—comprised of providers, advocates, and regulators of services—know first-hand the struggles that children and their families face in the Commonwealth. Throughout Massachusetts, we strive to ensure the availability of services and accessibility of support for all families in need. CLM opposes this legislation because Children Requiring Assistance should not be shackled and treated like criminals when no crime has been committed.

This legislation will drastically alter Chapter 240 of the Acts of 2012, An Act Regarding Families and Children Engaged in Services, which was passed unanimously by the Legislature in 2012. This legislation righted many of the wrongs in our outdated former CHINS system that treated stubborn, truant, and runaway children – known as “status offenders” because their behavior would not be illegal if committed by an adult – as criminals. The 2012 law represented an enormous step forward for the Commonwealth, bringing our law into alignment with evidence-based practice and what we know works for vulnerable youth. The law has been noted as a model for reform by national advocates working on these issues.

This new law signifies an acknowledgement that children should be diverted from the juvenile justice system when appropriate and instead should be provided with community-based services like behavioral, medical and substance abuse services. One major piece of this law prohibits children who require assistance from being placed in shackles or in police or court lockup facilities, further emphasizing the fact that these children require assistance and services and should not be treated as criminals because no crime has been committed. This particular piece of the new law also brought Massachusetts law into greater compliance with requirements under the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) that requires states to treat status offenders differently from delinquent youth and strongly discourages states from holding status offending youth in secure facilities at any stage in the process.
This legislation rolls back these important reforms by allowing law enforcement and court officials to use shackles and court lockup facilities, reversing vital language that was at the heart of the 2012 reform. It represents a step backwards and a lack of understanding of the significance of this law. The Legislature believed in 2012 that the passage of CHINS reform was critical for the well-being and success of the Commonwealth’s children. This is still very much true today; however, should this change be enacted, we will be unraveling a law that took 7 hard-fought years to pass and is essential to provide children and families with the services they need to remain intact and stable.

Experts in child welfare have been seeking a solution to the runaway concerns. A Runaway Assistance Program (RAP) has been created to assist police officers dealing with runaways when the juvenile court is closed. This program provides a safe place where police can bring a runaway child age 17 and under. When an officer determines that a runaway child cannot safely be delivered to a responsible adult, the RAP guides an officer to call Mass211 who will direct the officer to a RAP Specialist who can assist the officer in finding a safe location for the child called an Emergency Service Program (ESP). A non-secure Alternative Lockup Program (ALP) will then be dispatched to the ESP where an assessment of the child will be conducted and the ALP will arrange placement for the child. This is a new program and there have been challenges; however, it represents a promising and effective solution.

These proposed provisions directly put youth at risk for serious harm. Unfortunately, neither the court lock-ups nor the police lock-ups in Massachusetts consistently ensure that youth are separated by sight and sound from adult detainees. This violates requirements under the JJDPA and the federal Prison Rape Elimination Act (PREA). PREA requires that youth be separated from adults because of children’s incredible vulnerability to sexual assault when they are held alongside adults. Allowing young status offenders – kids who have not committed any crime at all – to be held in these facilities, and shackled on top of that, places them directly in harm’s way and violates the letter and spirit of both the JJDPA and PREA.

Some of these children and young people are dealing with an array of serious problems like substance abuse, undiagnosed mental health conditions, as well as domestic violence and sexual abuse. What they need is services and support, not an introduction to the criminal justice system. We hope that you will consider the impact that these changes would have on children and families as you consider this legislation. We respectfully urge the Committee to give this legislation an unfavorable report.

Sincerely,

Erin G. Bradley
Executive Director
Children’s League of Massachusetts