

SENATE No. 1070

By Mr. Conte, a petition (accompanied by bill, Senate, No. 1070) of John J. Conte and Paul A. Schneiders for legislation to authorize the diversion of delinquency complaints and to permit informal adjustment thereof. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Four.

**AN ACT TO AUTHORIZE THE DIVERSION OF DELINQUENCY COMPLAINTS
AND TO PERMIT INFORMAL ADJUSTMENT THEREOF.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 53 of chapter 119 of the General Laws,
2 as appearing in the Tercentenary Edition, is hereby amended
3 by adding the following sentence: It is the policy of the Com-
4 monwealth that proceedings against any child under said sec-
5 tions shall not be begun in any case unless informal adjust-
6 ment in the case of such child in accordance with the follow-
7 ing section has proven to be unsuccessful or unless such in-
8 formal adjustment appears to be an inappropriate method to
9 rehabilitate the child or to protect society.

1 SECTION 2. Said Chapter 119 is hereby further amended by
2 inserting after Section 53 the following section:

3 *Section 53A.* If any person alleges that a child between his
4 seventh and seventeenth birthday is a delinquent child, he
5 shall make application for a complaint to the court, as defined
6 in Section fifty-two, having jurisdiction of the case; and said
7 court shall examine on oath the person alleging such delin-
8 quency, and witnesses, if any, produced by him, and shall such
9 application for a complaint to writing, and cause it to be sub-
10 scribed by such person. A determination shall then be made
11 as to whether such a complaint shall be denied, or whether
12 there is sufficient evidence to warrant the issuance of a com-

13 complaint. When the clerk of the court, in consultation with the
14 Probation Officer having knowledge of the case, finds that
15 there is sufficient evidence to warrant the issuance of a com-
16 plaint, such complaint shall be issued unless informal adjust-
17 ment is arranged, in accordance with the provisions of this
18 section.

19 The presiding justice of each such court shall prescribe, by
20 local rule of court, and under such regulations and with such
21 exceptions as may be contained in said rule, that no com-
22 plaint shall issue except after a hearing, and until said justice
23 or the clerk of such court, certifies in writing that informal
24 adjustment of the matter appears inappropriate, and that the
25 public interest or welfare of the child requires that a com-
26 plaint be issued. Such hearing may include a preliminary in-
27 quiry or an informal hearing, at which the child and at least
28 one parent or guardian, if any, shall be present, but which
29 the presence of counsel for the child shall be permitted but not
30 required. If such justice or clerk does not certify that informal
31 adjustment is inappropriate, he may with the consent of the
32 child refer such child to the care of a probation officer for
33 assistance hereinafter described; and such probation officer
34 may refer the child to an appropriate public or private agency
35 or person for psychiatric, psychological, educational, occupa-
36 tional, medical, dental, social, supervisory or residential-care
37 services and may conduct conferences with the child and the
38 child's family for the purpose of effecting adjustments or
39 agreements which are designed to resolve the situation which
40 formed the basis for the application for a complaint. During
41 the pendency of such referrals or conferences, neither the
42 child nor his parents may be compelled to appear at any con-
43 ferences, produce any papers or to visit any place; and, a child
44 who is detained under the provisions of Section sixty-seven of
45 this chapter shall be immediately released upon his consent
46 to a referral to a probation officer as heretofore provided.
47 Referrals and conferences arranged under this section may
48 extend for a period not to exceed six months from the date
49 upon which application for the complaint was made; and at
50 the conclusion of such period, the child and his parents shall
51 be discharged from any further obligation to participate in

52 such conferences and referrals, and the application for the
53 complaint shall be dismissed and the record expunged pro-
54 vided that if the probation officer to whom the child was
55 referred shall at that time certify that the referrals and con-
56 ferences have failed to produce a satisfactory adjustment, or
57 shall at any earlier time certify that the child or his parents
58 have failed to participate in good faith in the referrals and
59 conferences arranged him, the justice or clerk who made such
60 referrals may issue the complaint applied for in accordance
61 with this section. No statement made by a child or any other
62 person in connection with the review, preliminary inquiry,
63 informal hearing, referrals or conferences hereinabove pro-
64 vided for may be used against such child at any subsequent
65 hearing on a complaint thus issued, except that such state-
66 ments may be received by the court after the child is adjudi-
67 cated a delinquent child to the extent that they are relevant to
68 proper disposition; and no justice who reviewed the initial
69 application for a complaint shall hear any such complaint after
70 its issue, except for purposes of arraignment, assignment of
71 date of hearing and appointment of counsel is necessary.

72 Any person applying for a complaint in accordance with the
73 first sentence of this section who is aggrieved by the failure
74 of clerk to certify that informal adjustment of the matter is
75 inappropriate may within three days apply for a review of such
76 decision by a justice of the court, and the decision of such
77 justice shall be final.

78 Each court shall report annually to the Commissioner of
79 Probation the number and type of cases adjusted informally in
80 accordance with this section, together with such other infor-
81 mation as he may prescribe; but the names of children in-
82 volved in such informal adjustment, shall not be reported, and
83 such informal adjustment shall not constitute a record of de-
84 linquency.

1 SECTION 3. Said chapter 119 is hereby further amended by
2 striking out section 54, as most recently amended by chapter
3 374 of the acts of 1966 and inserting in place thereof the fol-
4 lowing section:

5 *Section 54.* If a complaint is issued with respect to a child

6 under twelve years of age, said court shall first issue a sum-
7 mons requiring him to appear before it at the time and place
8 named therein, and such summons shall be issued in all other
9 cases, instead of a warrant, unless the court has reason to
10 believe that he will not appear upon summons, in which case,
11 or if such a child has been summoned and did not appear, said
12 court may issue a warrant reciting the substance of the com-
13 plaint, and requiring the officer to whom it is directed forth-
14 with to take such child and bring him before said court, to be
15 dealt with according to law, and to summon the witnesses
16 named therein to appear and give evidence at the examination.

1 SECTION 4. Section 58 of said chapter 229 is hereby amended
2 by adding the following paragraph:

3 The court may expend such sums as may annually be appro-
4 priated to its use to purchase services from any public or pri-
5 vate agency or person for psychiatric, psychological, educa-
6 tional, medical, dental and social services, and for the care and
7 support, for any child placed on probation under this section,
8 or whose case has been continued, or for any child referred to
9 a probation officer for assistance under the provisions of fifty-
10 three A of this chapter.

1 SECTION 5. Section 10 of chapter 120 of the General Laws,
2 as most recently amended by section 39 of chapter 838 of the
3 acts of 1969, is hereby further amended by inserting after
4 subsection (e) the following subsection:

5 (f) The department may expend such funds as are appro-
6 priated or made available by the federal government for the
7 purpose of purchasing from any public or private agency or
8 person psychiatric, psychological, educational, occupational,
9 medical, dental, social, supervisory or residential-care services
10 for any child not committed to the department, upon written
11 request of any court, when such services are prescribed for
12 such child by such court as a condition of continuance or pro-
13 bation or when such child has been referred to any such
14 agency or person by a probation officer of such court as pro-
15 vided by Section 53A of Chapter 119.

1 SECTION 6. This act shall take effect on January 1, 1975.