

# Law leaves kids nowhere to turn

By Lael Chester

When a child is in trouble, a parent's first instinct is typically to sit the youth down and ask "what happened?" But that simple and sensible act of concern could prove damaging in court. In most states, including Massachusetts, parents can be compelled to testify against their children.

There are many individuals to whom adults can turn for confidential advice and support: a member of the clergy, a therapist, an attorney and, of course, a spouse. The law recognizes that these special relationships depend upon privacy and so carefully limits the circumstances under which these people can be called upon to testify. Only four states extend that privilege to the parent-child relationship. This is especially problematic, as a child's relationship with a parent is likely the most important and intimate one in that child's life. Furthermore, the parent is almost always the gateway to religious, medical or legal help – the very areas where privilege is recognized. The lack of parent-child privilege is a major omission and can leave young people without a confidante or a protector.

Two pieces of legislation, Senate Bill No. 695 filed by Sen. Cynthia Creem and House Bill 420 filed by Rep. Michael Costello, would create a parent-child privilege in Massachusetts and allow parents to give their children guidance and support without fear that it will be used against them during the legal process.

The proposed reform would also acknowledge the special role that parents play in the juvenile justice system. The juvenile system seeks to involve parents, and in some circumstances mandates their participation. The system's goal is to rehabilitate, a much likelier outcome if there is a stable, supportive relationship with a parent. Given children's limited capacity to weigh outcomes and make major decisions, the law requires parents to attend all court proceedings and participate in the process. The bills seeking to create a parent-child privilege fit with a principle the Commonwealth already recognizes: Children do better in the juvenile system when parents are engaged.

"This is really a common sense piece of legislation that's going to strengthen families and make our juvenile justice system more effective – all without costing taxpayers a cent," Creem said. "We need to let parents be parents. We know that parental involvement is key to any child's success, so the state certainly shouldn't erect barriers to that."

Thankfully, it is not common for par-

ents to be compelled to testify against their children. But that does not mean that the current law does no harm. There is no way of knowing if the possibility that parents might have to offer evidence has a chilling effect on their discussions with their children or impedes their ability to aid in their children's defense or treatment at the very time their children need them the most. Nor can we know how the threat of compelled testimony may affect a child or family's decision about whether or not to take a plea offer to avoid the trauma of having a parent acting as witness against the child.

What we do know is that the stakes are high. Since the 1990s, juvenile justice has become more criminalized in the United States. Many prosecutors seek the most restrictive possible sentences, as they would in the adult system. One of the reasons so few states offer parent-child privilege may well be that the system was not originally conceived to be punitive; therefore the need for protections was not so urgent. The U.S. Supreme Court did not even establish due process rights for juveniles until 1967.

Senate Bill No. 695 and House Bill No. 420 thoughtfully and appropriately provide greater protection to children and leave little room for opposition, even from those individuals and agencies most concerned about strict accountability for juveniles. For instance, the privilege is limited in domestic violence cases when other family members are victims. The bills also define "parent" to include foster parents and guardians, an important recognition of the structure of so many families.

Massachusetts should embrace parent-child confidentiality because it is a pro-family reform that helps to protect children during proceedings that will have far-reaching consequences.

On a more pragmatic level, we should embrace privilege because it will make our juvenile justice system more effective. The goal of the juvenile justice system is to turn young people away from delinquency and toward full and productive participation in our communities. That benefits every citizen of the Commonwealth. It has been proved time and again that the system works best when it strengthens families. Why in the world would we keep a law on the books that could break families apart?

*Lael Chester is the executive director of Citizens for Juvenile Justice.*

VIEWPOINTS FROM ACROSS THE STATE

Vol. 32 - No. 4

The Newspaper of the Providers' Council

April 2011

# THE PROVIDER