

HOUSE No. 1430

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to Provide Stability and Services to Children in Foster Care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

HOUSE No. 1430

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1430) of Kay Khan and others relative to the protection of children in foster care. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to Provide Stability and Services to Children in Foster Care.

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 21 of chapter 119 of the General Laws, as most recently amended
2 by section 5B of Chapter 3 of the Acts of 2013, is hereby further amended by striking out
3 paragraph 9 and inserting in place thereof following a new paragraph:-

4 “Custody”, the power to: (1) determine a child's place of abode, medical care and
5 education; (2) control visits to a child; and (3) consent to enlistments, marriages and other
6 contracts otherwise requiring parental consent. If a child, parent or guardian objects to the
7 carrying out of any power conferred by this paragraph, that child, parent or guardian may take
8 application to the committing court, and the court shall take evidence and make a de novo
9 determination and order on the matter. The court may also make any such determination or order
10 sua sponte. If the court determines it to be in the child’s best interests, the court may order the
11 department to move a child or place a child in a specific foster home, residential program, or
12 other placement and may order the guardian or custodian of a child, including the department, to
13 provide visits and other contact under the conditions, with the frequency, and of a duration

14 specified by the court, between the child and the child's sibling, half-sibling, parent, guardian,
15 custodian or other person.

16 SECTION 2. Section 23 of said chapter 119 of the General Laws, as appearing in the
17 2012 Official Edition, is hereby amended by deleting paragraph (a)(3) and inserting in place
18 thereof the following:-

19 (a)(3). If a child is without proper guardianship due to death, unavailability, incapacity or
20 unfitness of a parent or guardian or with the consent of a parent or parents, the department may
21 seek, and shall accept, an order of the probate court granting responsibility for the child to the
22 department. Such responsibility shall include the right to: (i) determine the child's abode,
23 medical care and education; (ii) control visits to the child; (iii) consent to enlistments, marriages
24 and other contracts requiring parental consent; and (iv) consent to adoption only when it is
25 expressly included in an order of the court. If a child, parent or guardian objects to the carrying
26 out of any power conferred by this paragraph, that child, parent or guardian may take application
27 to the committing court, and the court shall take evidence and make a de novo determination and
28 order on the matter. The court may also make any such determination or order sua sponte. If the
29 court determines it to be in the child's best interests, the court may order the department to move
30 a child or place a child in a specific foster home, residential program, or other placement and
31 may order the guardian or custodian of a child, including the department, to provide visits and
32 other contact under the conditions, with the frequency, and of a duration specified by the court,
33 between the child and the child's sibling, half-sibling, parent, guardian, custodian or other
34 person. In making any order under this clause, the probate court shall consider section 29C and
35 shall make the written certification and determinations required by said section 29C. If a child is
36 in the care of the department of mental health or the department of developmental services, the

37 responsibility for the child as described in this section and all rights therein contained shall
38 continue in the department. If a person with mental retardation who has been declared mentally
39 incompetent was the responsibility of the department prior to reaching the age of 18, the
40 department shall continue to exercise responsibility for that person until that person is declared to
41 be no longer legally incompetent.

42 SECTION 3. Section 24 of said chapter 119, as so appearing, is hereby amended by
43 striking out paragraphs three and four and inserting in place thereof the following two
44 paragraphs:-

45 If the court is satisfied after the petitioner testifies under oath that there is reasonable
46 cause to believe that: (i) the child is suffering from serious abuse or neglect or is in immediate
47 danger of serious abuse or neglect; and (ii) that immediate removal of the child is necessary to
48 protect the child from serious abuse or neglect, the court may issue an emergency order
49 transferring custody of the child for up to 72 hours to the department or to a licensed child care
50 agency or individual described in subclause (i) of clause (2) of subsection (b) of section 26.

51 Upon entry of the order, notice to appear before the court shall be given to both parents,
52 either parent, a guardian with care and custody, or another custodian. At that time, the court shall
53 determine whether custody can be restored to the parent or guardian. If custody cannot be
54 restored to the parent or guardian, the court shall determine whether temporary custody shall
55 continue, in the department or with an individual described in subclause (i) of clause (2) of
56 subsection (b) of section 26, beyond 72 hours. Thereafter, at any time prior to the conclusion of
57 the hearing on the merits, the court may restore custody of the child to the

58 parent(s) or guardian if it is satisfied that continued removal of the child is not necessary
59 to protect the child from serious abuse or

60 neglect, or it may transfer custody of the child to an individual described in subclause (i)
61 of clause (2) of subsection (b) of section 26 in the best interests of the child.

62 SECTION 4. Section 26 (a) of said chapter 119, as so appearing, is hereby amended by
63 inserting after the first sentence the following new sentence:-

64 The court may thereafter grant temporary or permanent custody of the child to the child's
65 parent without a finding that the child's other parent is unfit or adjudicating the child in need of
66 care and protection.

67 SECTION 5. Said section 26 of said chapter 119, as so appearing, is hereby further
68 amended by inserting at the end thereof the following new subsection:-

69 (d) The probate and family court department shall have exclusive jurisdiction to modify
70 or enforce an order entered under chapter 119 awarding permanent legal custody of a child to the
71 child's parent to the same extent that it has jurisdiction over a complaint for modification or
72 enforcement of a foreign judgment.

73 SECTION 6. Section 29 of said chapter 119, as so appearing, is hereby amended by
74 inserting after the second paragraph the following paragraphs:-

75 No later than five business days before any non-emergency change in a child's or a
76 young adult's placement or any non-emergency hospitalization, and no later than one business
77 day after any emergency change in a child's or a young adult's placement or any emergency

78 hospitalization, the department shall provide notice of the change in placement or hospitalization
79 to the child's or the young adult's attorney.

80 No later than the first business day thereafter, the department shall provide notice to a
81 child's attorney if it receives a report under section 51A and the child is the subject of the report.

82 No later than the first business day thereafter, the department shall provide notice to a
83 child's attorney or a young adult's attorney if it receives a report under section 51A that raises
84 substantial questions regarding the suitability of the child's or young adult's current placement or
85 any of the child's or young adult's service providers.

86 No later than the first business day thereafter, the department shall provide notice to a
87 child's or young adult's attorney whenever it becomes aware of: 1) the child or young adult
88 being arrested; 2) the child's or young adult's potential involvement in any proceeding under this
89 chapter or any criminal investigation or proceeding; (3) the child or young adult being suspended
90 from school; or (4) the child or young adult being the subject of any proceeding that could result
91 in his or her suspension or expulsion from school.

92 SECTION 7. The department of children and families shall promulgate regulations to
93 implement SECTION 6 of this act no later than six months from the effective date of this act.