

**HOUSE . . . . . No. 56**

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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 relative to fair hearings in the department of children and families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/19/2011</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>1/31/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/31/2011</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/3/2011</i>
<i>Cynthia S. Creem</i>		<i>2/4/2011</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>	<i>2/4/2011</i>
<i>Gale D. Candaras</i>		<i>2/4/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 56**

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By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 56) of Kay Khan and others relative to hearings in the department of children and families. Children, Families and Persons with Disabilities.

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**

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An Act relative to fair hearings in the department of children and families.

*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. Chapter 18B of the General Laws, as appearing in the 2008 Official Edition, is  
2 hereby amended by inserting after the word "assistance" on the last line of section 5, the  
3 following:-

4           "(a) There shall be within the department a division of hearings for the purpose of  
5 holding the hearings referred to herein and rendering decisions. Said division shall be under the  
6 supervision of a director appointed by the commissioner and shall be independent of all other  
7 divisions and personnel of the department except as specifically set forth herein.

8           (b) Any person aggrieved by any decision of the department which is eligible for an  
9 administrative hearing pursuant to the regulations of the department shall have a right to a  
10 hearing, after due notice, upon appeal to the director. Any determination by the division of  
11 hearings that there is no right to a hearing shall be provided to the appellant in writing and shall

12 include a statement of the reasons therefore. The appellant shall have a right to a fair hearing to  
13 determine whether the facts underlying that determination are accurate.

14 (c) A hearing held pursuant to this section shall be conducted by a hearing officer  
15 designated by the director and shall be held at the area office at which the decision was made or  
16 at another location that is equally or more convenient to the appealing party. The provisions of  
17 chapter 30A, section 12 shall apply to all such hearings. The director shall be responsible for  
18 the fair and efficient operation of the division in conformity with state and federal laws and  
19 regulations and may review and discuss with the hearing officer proceedings held pursuant to  
20 this section solely in order to carry out this responsibility. No person outside of the hearings unit  
21 shall communicate about any pending case with any member of the hearings unit unless such  
22 communication is made in the presence of all parties or submitted in writing with copies to all  
23 parties. The director shall also be responsible for the training of hearing officers, scheduling of  
24 hearings and the maintenance of a docket/decision index which shall be available for public  
25 inspection.

26 (d) The hearing office shall schedule a fair hearing to be held within 90 days of receipt of  
27 a request for a fair hearing, and shall render decisions within 30 days from the close of the  
28 hearing record. Upon request for good cause shown, a showing that circumstances require a  
29 speedy resolution, the department may expedite the hearing so that it is held sooner than 90 days  
30 from the request. The hearing officer may extend the deadline for rendering a decision one time  
31 provided that good cause reasons for the delay are stated in a written decision to continue, but, in  
32 no event may a hearing officer render a fair hearing decision more than 150 days from the date of  
33 the fair hearing request. The decision of the department shall be subject to review in accordance  
34 with the provisions of chapter 30A.

35 (e) (i) The filing of a request for a fair hearing allowable under the regulations of the  
36 department regarding a decision to terminate or reduce services shall stay the effect of the  
37 challenged decision until after the fair hearing is held and the fair hearing decision is rendered.

38 (ii) The filing of a request for a fair hearing allowable under the regulations of the  
39 department within 10 days of the removal of a child from a foster home shall stay the removal of  
40 the child until after the fair hearing is held and decided. However, upon a written finding that the  
41 physical, mental or emotional safety of the child would be placed at risk if the child is not  
42 removed immediately, the removal may take place before the fair hearing, and the fair hearing  
43 shall be held and the decision rendered within 14 days of the removal.

44 (iii) Except as provided in paragraphs (e)(i) and (e)(ii) above, the filing of a request for a  
45 fair hearing shall not otherwise stay or affect the implementation of the challenged hearing  
46 decision. The decision shall be reversed if the fair hearing is not held within 90 days, or if the  
47 decision is not rendered within 150 days from the postmark date of the request. Upon a written  
48 finding that the physical, mental or emotional safety of a child would be placed at risk by  
49 reversing the challenged decision, the department shall have an additional 14 days to hold the  
50 fair hearing and render a decision.

51 (f) The hearing officer shall provide a copy of the written hearing decision to the  
52 appealing party and the Department. Within 20 days of the postmark date of mailing or of the  
53 date of in-hand delivery of the hearing officer's decision, an appealing party or a departmental  
54 representative may request that the commissioner reconsider the hearing officer's decision. The  
55 hearing officer's decision shall become final 30 days from issuance unless the appealing party is  
56 notified within that time period that the commissioner intends to reconsider the decision. The

57 commissioner shall render a decision within 60 days of giving notice of an intent to reconsider.  
58 If upon reconsideration the commissioner issues a decision which differs from the hearing  
59 officer's decision, the commissioner's decision must state the facts, law and policy supporting  
60 any such difference. The commissioner's reconsideration decision shall be the final decision of  
61 the Department, but the hearing officer's decision shall also be included in the record for judicial  
62 review. If the commissioner does not render a decision within 60 days from giving notice of an  
63 intent to reconsider, then the hearing officer's decision shall become the final decision of the  
64 department 60 days from the date of the commissioner's notice of an intent to reconsider."