

HOUSE No. 56

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

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.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

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

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

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

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

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

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

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