

HOUSE No. 783

The Commonwealth of Massachusetts

PRESENTED BY:

Tricia Farley-Bouvier

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 improve permanency and placement stability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

HOUSE No. 783

By Ms. Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 783) of Tricia Farley-Bouvier and others for legislation to improve permanency and placement stability for children. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to improve permanency and placement stability.

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. Paragraph (7) of subsection (a) of section 23 of chapter 119 of the General
2 Laws, as so appearing, is hereby amended by inserting after clause (i) the following subsection:-

3 (j) Each child, age 7 or older, shall be given a meaningful opportunity to participate in the
4 development of the case plan and to state the child’s preference(s) for initial and any subsequent
5 placement or custody. The department shall ask any child, age 7 or older, to provide the names of
6 any kin or other adults with whom the child has a relationship. Further, the department shall ask
7 any child, age 7 or older, in private, to state the child’s preference(s) for initial and any
8 subsequent placement or custody.

9 Each parent shall also be asked to provide the name of kin or other adult with whom the
10 child or the family has a relationship who could serve as a potential placement for the child. Each
11 parent shall also be given a meaningful opportunity to participate in the development of the case

12 plan and to state the parent's preference(s) for initial and any subsequent placement or custody of
13 the child.

14 If the department has, or is seeking, custody of a child, the department shall first
15 investigate the possibility of placing the child in accordance with the placement preferences of
16 the child and/or parent(s). The department shall complete that investigation before placing the
17 child and make placement changes as appropriate based on the outcome of that investigation.
18 Specific reasons for placement decisions must be documented in writing in the case file,
19 including the reasons for rejecting placements identified by the child and/or parent(s).

20 SECTION 2. Section 29C of said chapter 119, is hereby amended by striking the section
21 in its entirety and inserting in place thereof the following:-

22 If a court of competent jurisdiction commits, grants custody or transfers responsibility for
23 a child to the department or its agent, the court shall certify that the continuation of the child in
24 his home is contrary to his best interests and shall determine whether the department or its agent,
25 as appropriate, has made reasonable efforts prior to the placement of a child with the department
26 to prevent or eliminate the need for removal from the home; this shall include both the ex parte
27 removal hearing and the temporary orders hearing under section 24, the pre-trial conference, and
28 permanency hearings under section 29B. In addition, parents shall be authorized to file motions
29 for re-determination of reasonable efforts in the same manner as other motions filed pursuant to
30 section 21.

31 If a child has been placed voluntarily with the department by the parent under clause (1)
32 of subsection (a) of section 23 and the parent consents to continued placement under a petition
33 filed under said clause (1) or clause (2) of said subsection (a) of said section 23, the court shall

34 determine at an initial hearing only whether continued placement is in the child's best interests.
35 Except as provided herein, if a court has previously committed, granted custody or transferred
36 responsibility for a child to the department or its agent, the court shall determine not less
37 frequently than annually whether the department or its agent has made reasonable efforts to make
38 it possible for the child to return safely to his parent or guardian. In making any determination,
39 the health and safety of the child shall be of paramount concern.

40 If a young adult continues under the responsibility of the department pursuant to
41 subsection (f) of section 23, the committing court shall continue to annually determine whether
42 the department or the department's agent has made reasonable efforts to achieve the permanent
43 plan approved by the court under section 29B.

44 Reasonable efforts by the department prior to removal of a child from the home or to
45 return the child to a parent or guardian shall not be required if the court finds that: (i) the child
46 has been abandoned as defined in section 3 of chapter 210; (ii) the parent's consent to adoption of
47 a sibling of the child was dispensed with under section 26 or under said section 3 of said chapter
48 210, or the parent's rights were involuntarily terminated in a case involving a sibling of the child;
49 (iii) the parent has been convicted of 1 of the following crimes by a court of competent
50 jurisdiction: (a) murder or voluntary manslaughter of another child of the parent or aiding,
51 abetting, attempting, conspiring or soliciting to commit such a murder or voluntary
52 manslaughter; or (b) an assault constituting a felony which resulted in serious bodily injury to the
53 child or another child of the parent; or (iv) a parent has subjected the child to aggravated
54 circumstances consisting of murder of another parent of the child in the presence of the child or
55 by subjecting the child or other children in the home to sexual abuse or exploitation or severe or
56 repetitive conduct of a physically or emotionally abusive nature. For the purposes of this section,

57 conduct of an “emotionally abusive nature” shall mean any conduct causing an impairment to or
58 disorder of the intellectual or psychological capacity of a child as evidenced by observable and
59 substantial reduction in the child's ability to function within a normal range of performance and
60 behavior.

61 If a court has determined at a permanency hearing convened under section 29B, that
62 reasonable efforts to safely return the child to his parent or guardian are inconsistent with the
63 permanency plan for the child or if a court has determined that reasonable efforts are not required
64 as set forth herein, the court shall determine at least annually thereafter whether the department
65 has made reasonable efforts to place the child in a timely manner in accordance with the
66 permanency plan determined and reviewed under section 29B. In addition, parents shall be
67 authorized to file motions for re-determination of reasonable efforts in the same manner as other
68 motions filed pursuant to section 21.

69 The court shall make the certification and determinations required under this section in
70 written form, which shall include the basis for the certification and determinations. A
71 determination by the court that reasonable efforts were not made shall not preclude the court
72 from making any appropriate order conducive to the child's best interest.

73 SECTION 3. Said Chapter 119 is hereby amended by added at the end thereof the
74 following new section:-

75 Section 86. (a) There shall be a review by a regional clinical review team when a child or
76 young adult experiences more than 2 placements in a single foster care episode. Said review shall
77 include, but not be limited to, the physical, mental, and emotional effects experienced by that

78 child or young adult as a result of frequent placements and additional services to mitigate these
79 effects.

80 (b) In accordance with federal Child and Family Service Reviews, a single foster care
81 episode shall begin on the date when a child is removed from the home and shall end when the
82 child is no longer under the care and custody of the commonwealth. The count of placement
83 settings shall not include temporary stays in hospitals, camps, respite care, or institutional
84 placements.

85 SECTION 4. Section 3 of chapter 210 of the General Laws, as so appearing, is hereby
86 amended by adding the following subsection:-

87 (e) For the purposes of this subsection, the term “child” shall include a young adult as
88 defined in section 21 of chapter 119. If at least 2 years have passed since the court entered an
89 order terminating parental rights pursuant to this chapter or chapter 119, a child whose parents
90 were the subject of that order may file a motion requesting that the court reinstate parental rights
91 with respect to 1 or both of the child’s former parents, but only if all of the following apply:

92 (i) the child is at least 12 years of age;

93 (ii) the court has determined after a hearing held pursuant to section 29B of chapter 119
94 that adoption is no longer the permanency plan for the child; and

95 (iii) either the child has not been adopted or, if the child has been adopted, a court has
96 entered an order terminating the parental rights of the child’s adoptive parents or the adoptive
97 parents have voluntarily surrendered their parental rights.

98 The child shall sign the motion in absence of a showing of good cause as to why the child
99 is unable to sign the motion. The court shall order that an evidentiary hearing be held and
100 provide notice, in the manner prescribed for a petition filed pursuant to section 24 of chapter 119,
101 of the hearing to the child's former parents. Neither parent shall be considered a party for the
102 purpose of the motion, nor shall either have an independent right to be heard, though a parent's
103 testimony may be offered into evidence if the parent is called as a witness by a party. The court
104 shall grant the motion if it determines by a preponderance of the evidence that vacating the order
105 terminating parental rights is in the child's best interests. The court shall specify in writing the
106 factual basis for its determination. As soon as practicable after granting the motion, the court
107 shall enter an order pursuant to subsection (b) of section 26 of chapter 119, provided that the
108 order is in the best interests of the child.