HOUSE DOCKET, NO. 3395 FILED ON: 1/20/2023

HOUSE . . . . . No. 164

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Finn

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 establishing a bill of rights for children in foster care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Michael J. Finn	*6th Hampden*	*1/20/2023*
Sean Garballey	*23rd Middlesex*	*1/23/2023*
John Barrett, III	*1st Berkshire*	*1/25/2023*
Susannah M. Whipps	*2nd Franklin*	*1/25/2023*
Brian W. Murray	*10th Worcester*	*1/25/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/26/2023*
Paul J. Donato	*35th Middlesex*	*1/27/2023*
Christine P. Barber	*34th Middlesex*	*1/27/2023*
Carol A. Doherty	*3rd Bristol*	*2/3/2023*
Tricia Farley-Bouvier	*2nd Berkshire*	*2/9/2023*
Brian M. Ashe	*2nd Hampden*	*2/13/2023*
Paul McMurtry	*11th Norfolk*	*2/21/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/21/2023*
Shirley B. Arriaga	*8th Hampden*	*2/23/2023*
Samantha Montaño	*15th Suffolk*	*5/8/2023*
Natalie M. Higgins	*4th Worcester*	*5/2/2024*
Kay Khan	*11th Middlesex*	*5/2/2024*

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HOUSE . . . . . No. 164

By Representative Finn of West Springfield, a petition (accompanied by bill, House, No. 164) of Michael J. Finn and others relative to establishing a bill of rights for children in foster care. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act establishing a bill of rights for 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:

SECTION 1. Chapter 119 of the General Laws, as appearing in the 2020 official edition, is hereby amended by inserting after section 23C the following section:-

Section 23D. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Child" means any child, youth or young adult in the care or custody of the department.

"Child-specific family" means a non-kinship individual who is significant in a particular child's life (e.g., school teacher comes forward; child recommends friend's parent).

(b) The department must present a copy of the following rights to each child in its care when the child enters care, during foster care review meetings, during permanency planning meetings in which the child is participating and at any other times the department deems appropriate. The child's social worker must also explain these rights to the child in an age-

appropriate way when the child enters care. The department must present the document to the child's attorney and display the document prominently on its website and in all area offices. The department shall ensure the document is translated into the language spoken by the child.

(c) The bill of rights for children in foster care shall include, but not be limited to, the following:

(1) Safety and Security:

(i) Each child shall be treated with respect and shall not be harassed or discriminated against by department staff, foster parents or service providers on the basis of race, national origin, culture, language, ethnicity, sexual orientation, gender, gender identity, gender expression, religion or disability.

(ii) Each child has the right to a placement that is free from physical, sexual, emotional or other abuse, neglect or exploitation.

(iii) Each child shall have access to healthy food, clothing, personal care products and items that preserve and promote the child's family's culture or religion and the child's specific hair and body needs.

(iv) Each child shall be placed in a safe and nurturing environment and receive appropriate care and treatment in the least restrictive setting available that can meet the child's needs. No child shall be placed, housed or detained in a secure department of youth services (DYS) placement based on the department's inability to provide an available and appropriate foster placement, nor shall the department advocate for bail of any amount for children in its care or custody.

(v) Each child has the right to age-appropriate information about a foster family or program prior to being placed and, whenever possible, shall have an opportunity to meet the foster parent or program staff before placement occurs. If the foster placement is only able to accommodate the child for a limited time, the child shall be notified of the anticipated duration of the child's stay with that foster placement. The child shall be informed of a placement change, and the reason(s) therefore, at least 5 days in advance of any change. When a change is made in an emergency circumstance, the child shall be given as much notice as possible. The child's belongings shall be packed with care and the child shall be allowed to bring their essential belongings and comfort items with them.

(vi) Each child has the right to safe access to personal possessions, personal space and privacy.

(2) Connections to Family, Community and Identity:

(i) Each child has the right to know, understand, learn and develop the child's racial, cultural, linguistic, gender, religious and ethnic identity, including but not limited to clothing, hair, and other cultural expressions of identity, and to a placement that will provide or maintain the connections necessary to preserve and promote the child's identities.

(ii) Each child has the right to be placed according to the child's gender identity and referred to by the child's identified name and gender pronoun. A child's sexual orientation and gender identity and expression shall remain private unless the child permits the information to be disclosed, the disclosure is required to protect the child's health and safety or disclosure is compelled by law or a court order.

(iii) Each child has the right for the department to prioritize the child's parents, relatives and child-specific family first as potential placement providers. The child's parents and relatives shall be considered first.

(iv) Each child has the right for the department to first consider placements with the child's siblings or half-siblings also removed from the home unless the joint placement is contrary to the safety, well-being, or path to permanency for any of the siblings. Whenever possible, the department shall work to address barriers to placing siblings together. The department shall ensure the child be placed in close proximity to siblings if unable to be placed in the same setting and shall facilitate frequent and meaningful contact regardless of geographic barriers.

(v) Each child shall have the right to family time of a duration and frequency that is consistent with the developmental needs of the child. Family time shall take place in-person and outside of a department office whenever possible. Each child shall also have the right to other forms of parental contact, including but not limited to phone calls, videoconferences, email and texts. Congregate care programs should work to facilitate access to virtual forms of contact. Whenever possible, family time shall take place outside of school hours.

(vi) Each child has the right to maintain positive contact with other family members and significant positive relationships in the child's life, including but not limited to teachers, friends and community supports.

(vii) Each child has the right to be treated as a family member in a foster family and, whenever possible, be included in a foster family's activities, holidays and rituals.

(viii) Each child has the right to preserve and maintain all languages the child entered care speaking and to a placement that provides or facilitates appropriate language access.

(3) Health Care and Accessibility:

(i) Each child has the right to access appropriate medical, reproductive, dental, vision, mental and behavioral health services regularly and more often as needed.

(ii) Each child has the right to discuss any questions or concerns the child has relating to medication with a social worker or healthcare provider and to understand each of the medications the child takes, its purposes and side effects in a developmentally-appropriate way.

(iii) Each child has the right to out-of-home placements that are accessible for any disabilities the child may have and reasonable accommodations as necessary. These accommodations will be provided in a timely manner and in such a way as to protect the privacy of the child with a disability. Each child also has a right to discuss any disabilities with a social worker and request adaptive equipment, auxiliary aids or services.

(iv) Each child has the right to access gender-affirming care.

(4) Education, Employment and Social Connections:

(i) Each child has the right to school, educational stability, educational supports and to an education that fits the child's needs.

(ii) Each child has the right to stay in the child's school of origin unless doing so would not be in the child's best interest.

(iii) Each child has the right to participate in age-appropriate school, extracurricular, enrichment, religious, cultural, linguistic, ethnic and social activities and to have any placement provider use the reasonable and prudent parenting standard when making decisions regarding participation in such activities.

(iv) Each child has the right to achieve developmentally-appropriate, age-related milestones, including but not limited to obtaining a driver's license, opening bank accounts, birthday celebrations or graduations. The department shall cover any costs associated with these milestones.

(v) Each child will be informed of the educational, vocational and employment supports available to children through the department, including but not limited to any tuition and fee waivers for post-secondary education.

(vi) Each child shall be informed of all available services, including but not limited to assistance in acquiring life skills, educational assistance, financial support, housing support, assistance with credit reports and resolving inaccuracies, training and career guidance to accomplish personal goals and prepare for the future, post-secondary education and employment supports available to children in care and adaptive equipment or auxiliary aids and supports.

(vii) Each child shall have age-appropriate education through the department on financial preparedness, job readiness, appropriate use of social media, education options, healthy relationships and sexual and reproductive health.

(5) Resources and Supports:

(i) The department shall provide reasonable efforts towards reunification to the child and the child's family of origin, pursuant to state and federal law.

(ii) Each child has the right to reasonable access to a caseworker who makes case plan decisions. Reasonable access shall include the social worker and supervisor's office telephone numbers and email addresses as well as, at a minimum, monthly visits by the social worker. The department shall also provide the child an emergency contact number available 24 hours a day, 7 days a week. Such access must include the opportunity to have private conversations regarding any questions, grievances, or concerns.

(iii) Each child shall have the right to participate in the development and review of the service and visitation plans and shall be consulted as the department formulates or updates said plans. Children age 14 and older shall also be presented with the action or service plan for their review and signature.

(iv) Each child has the right to be informed in a developmentally-appropriate way of the reason(s) the department became involved with the child's family, why the child came into care and why the child is still in care. Upon turning 18, children will have the right to access their case files, barring any confidential or legally privileged information.

(v) Each child age 14 or older has the right to be included in the foster care review meeting, permanency hearing and lead agency team meeting, unless documented by court order that participation would be detrimental to the child. If the child is unable to attend in person or by phone or video, the child shall have the right to submit a written statement to be considered at the meeting.

(vi) Each child shall be notified by the department about court dates and the department shall ensure the child understands the child's right to attend court hearings and speak to the judge regarding any decision that may have an impact on the child's life.

(vii) Each child has the right to access information contained in medical, dental and educational records held by the department as well as personal documents, including but not limited to social security card, birth certificate, health insurance information, state identification, driver's license or green card in a developmentally-appropriate way. When a child leaves the care of the department, they shall be given copies of medical, dental and educational records held by the department and original copies of all personal documents. The department shall begin planning to return the documents to the child at least 30 days before the child leaves care to be able to give the documents to the child on the day of the child's departure. When a child ages out of care, the department must assist the child in obtaining a state identification card if the child does not have one.

(viii) Each child has the right to an attorney upon entering care and to meaningful contact with said attorney. Each child shall be informed by the department of the names and phone numbers of assigned attorneys and be informed by a social worker that the child can contact the attorneys and that there is a process to request a change of attorneys.

(ix) Each child shall be informed by the department of the clothing, birthday and holiday payments to foster parents and placement providers for children in placement and that the child has the right to have those payments used to meet the child's needs.

(6) Transition Age Youth

(i) Every child who turns 18 while in custody of the department is automatically signed out of care of the department but has the right to sign back into department care prior to turning 23, pursuant to federal requirements. Every child shall be made aware of this right throughout the transition planning process as well as any federal requirements governing services for transition age youth.

(ii) At the age of 14, the department shall begin working with the child to plan their transition from foster care to adulthood. The transition plan should cover all areas needed for a youth to be stable and successful as an adult, including housing, employment, education, and physical and behavioral health.

(iii) Every child above age 18 who has chosen to remain in the custody of the department has the right to leave and re-enter custody at any time for any reason.

(iv) During the transition planning process, the department shall inform the child of all resources and supports available to the child, including housing, educational and vocational supports.

(7) Remedies

(i) Each child shall have the right to file complaints with the department's ombudsperson and/or the office of the child advocate and shall be free from retaliation or punishment for asserting this right. The department must provide the child with contact information for the ombudsperson and the office of the child advocate.

(ii) Each child shall have the right to have these rights enforced and to report complaints and violations of these rights. If the child, the child's attorney or the child's foster parent or

placement provider believes any of the above rights have been violated, the child shall have the right to discuss the alleged violation with a social worker, file a complaint with the office of the child advocate or the department’s ombudsperson and/or petition the court for a determination. The department shall not retaliate against or punish a child, an attorney or a foster parent for asserting this right. If the social worker, the office of the child advocate or the court determines the child's rights have been violated, the department shall resolve the violation as soon as practicable.