HOUSE DOCKET, NO. 963 FILED ON: 1/17/2023

HOUSE . . . . . No. 157

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 protecting benefits owed to foster children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tricia Farley-Bouvier	*2nd Berkshire*	*1/17/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/20/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*1/25/2023*
David F. DeCoste	*5th Plymouth*	*1/26/2023*
Joseph D. McKenna	*18th Worcester*	*1/31/2023*
Vanna Howard	*17th Middlesex*	*2/1/2023*
Mary S. Keefe	*15th Worcester*	*2/6/2023*
Michelle M. DuBois	*10th Plymouth*	*2/7/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*4/3/2023*
Sean Garballey	*23rd Middlesex*	*4/27/2023*
Samantha Montaño	*15th Suffolk*	*5/4/2023*
Natalie M. Blais	*1st Franklin*	*7/11/2023*
Michelle L. Ciccolo	*15th Middlesex*	*7/12/2023*
Natalie M. Higgins	*4th Worcester*	*3/14/2024*
Paul J. Donato	*35th Middlesex*	*3/18/2024*

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HOUSE . . . . . No. 157

By Representative Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 157) of Tricia Farley-Bouvier and others relative to protecting benefits owed to foster children. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act protecting benefits owed to foster children.

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. Section 21 of chapter 119 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the definition of "Appropriate Services" the following definition:-

"Benefits", benefits under Title XVI of the Social Security Act, also referred to as "Supplemental Security Income" or "SSI"; benefits under Title II of the Social Security Act, also referred to as "Retirement, Survivors or Disability Benefits" or "RSDI"; or federal veterans benefits.

SECTION 2. Said section 21 of said chapter 119, as so appearing, is hereby further amended by inserting after the definition of "Relative" the following definition:-

"Representative Payee or Fiduciary", any person or entity designated to receive benefits for a minor child under the agency rules governing such benefits.

SECTION 3. Section 23 of said chapter 119, as so appearing, is hereby amended by inserting after subsection (i) the following subsection:-

(j) The department shall comply with section 23C, including providing eligibility screening, payee or fiduciary assistance, appropriate notice, benefits accounting, conservation of benefits and other services relative to benefits for children and youth below the age of 22 under the custody, care, or responsibility of the department.

SECTION 4. Chapter 119 of the General Laws is hereby amended by inserting after section 23B the following section:-

Section 23C. (a) When a child is placed in substitute care pursuant to a voluntary placement agreement or due to court-ordered custody, the department shall make all reasonable efforts to identify within 60 days of the child being committed to custody of the department whether the child is already receiving or may be eligible to receive benefits. In reviewing eligibility, the department shall consult with the parents and others who may have information about the child's eligibility. If the department ascertains, or has cause to believe, that the child may be eligible for benefits, it shall apply to the agency administering such benefits on the child's behalf, in cooperation with the child's attorney. If benefits are denied, the department

shall notify the child's attorney and consult with its legal department regarding whether to appeal the decision. The department shall review cases of children in care annually to determine whether the child may have become eligible for benefits after the initial assessment. Whenever the child is or may be eligible for SSI, the department shall, if necessary for benefits eligibility, forego claiming that child for purposes of any federal IV-E maintenance payments under Section 475(4) of the Social Security Act. The department shall designate an individual in its central office and each of its regional offices to oversee its responsibilities under this subsection.

(b) If the child is already receiving benefits prior to entering department custody, the department may apply to be designated as the child's representative payee or fiduciary. If the department is applying for benefits for the child, the department may also apply to be the representative payee or fiduciary. In either instance, in deciding whether to apply to be the representative payee or fiduciary, the department, in cooperation with the child's attorney, shall consider the preferences mandated in 20 C.F.R. § 404.2021(c) or 20 C.F.R. § 416.621, or other applicable program rules, and apply to become representative payee or fiduciary only if there is no other suitable candidate available. Where the goal is reunification, the department shall consider whether applying to become the child's representative payee or fiduciary will undermine the goal of reunification and be contrary to the child's best interests. Where the department is the representative payee or fiduciary, the department shall periodically review if under current circumstances, someone other than the department is available to apply to the applicable benefits agency to assume such a role, and could better serve as representative payee or fiduciary, in the child's best interests.

(c) When the department submits an application to be appointed as a child's representative payee or fiduciary, or applies on behalf of the child for benefits, the department shall provide prior notice to the child's parents if parental rights have not been terminated, the legal guardian or guardians, the child's attorney, the attorney or attorneys for the parents or legal guardian, the child's caseworker and the child, if the child is aged 12 or older. The notice shall state that interested parties may submit information relevant to the selection of a representative payee or fiduciary for the child, and that individuals may have the right to contest the selection of a representative payee or fiduciary before the Social Security Administration or Veterans Administration. Prompt notice shall also be given to such persons regarding any communications from the Social Security Administration or Veterans Administration pertaining to acceptance or denial of benefits or the selection of a representative payee or fiduciary, as well as any appeal or other action requested by the department regarding an application for benefits. Prompt notice shall also be given to all such parties whenever a special trust account or savings account is established on behalf of the child under subsections (e) and (f).

(d) When the department is the child's representative payee or fiduciary, it shall maintain an accounting of the child's benefits, and shall submit a report quarterly to the child, if the child is aged 12 or over, parents, if parental rights have not been terminated, guardian, counsel for the child, counsel for the parent or parents, counsel for the guardian, the child's caseworker and the court. The report shall include a statement of the amount and source of benefits collected by the department since any prior notification; the amount of benefits paid into any account maintained on behalf of the child; any amounts deducted by the department and the reasons for the deductions; any other withdrawals from the account established for the child and the reasons for

such withdrawals; and information regarding all the child's assets and resources, including benefits, insurance, cash assets, trust accounts, and earnings.

(e) If the department is the child's representative payee or fiduciary, it shall place no less than 10 per cent of the child's benefits in an account to be used only for the child's personal needs. The department shall not use such funds to pay for items or activities that it ordinarily purchases for other foster children who do not receive benefits. If the child is receiving SSI benefits, the department shall ensure that any funds retained for personal needs do not exceed any federal asset limit. The balance of funds from benefits held by the department as a representative payee or fiduciary may be spent on unmet needs, subject to program requirements for administration of such benefits, and otherwise shall be conserved as savings for the child's transition to adulthood at age 18. Any funds administered for SSI recipients above the federal asset limit shall be conserved in an Achieving a Better Life Experience (ABLE) account, authorized by Section 529A of the Internal Revenue Code of 1986, or another trust account for the child determined not to interfere with SSI or asset limitations for any other benefit program. If the child is not receiving SSI or other benefits with an asset limit, the department shall place excess funds in a savings account for the child. Benefits of a foster child shall not be used by the department to offset the cost of providing foster care. If the department is the child's representative payee or fiduciary and receives retroactive benefits for the child, those funds shall be administered as required by program rules and placed in a separate dedicated account pursuant to applicable regulations, where necessary.

(f) The department shall take steps to conserve the benefits of children receiving benefits under this paragraph to assist them in the transition to adulthood and living independently. The department shall establish accounts as specified in subsection (e) in conserving a child's benefits. The department shall work actively with the Social Security Administration and the child to ensure that when the child leaves foster care or turns 18, all payments of benefits will be returned to the Social Security Administration to be held on the child's behalf or, upon the instructions of Social Security Administration, transferred to the child or to a new representative payee. The department shall provide the child with ongoing financial literacy training and support, including specific information regarding the existence, availability, and use of funds conserved for the child, beginning by age 14. Financial literacy training concerning restrictions on the use of conserved funds shall also be made available to all parents, guardians, and adoptive parents gaining access to funds conserved by the department.

(g) The department shall provide an annual report to the house and senate committees on ways and means, the committee on children, families and persons with disabilities, the clerks of the house and the senate and the secretary of the executive office of administration and finance, not later than September 1; provided, that the report shall set forth (i) the numbers of children committed to the department's custody who were screened for eligibility for benefits; (ii) whether such screening occurred within 60 days of being committed to the department's custody and if not, the date of the screening and reasons for the delay; (iii) the percentage of the children screened who were already receiving benefits; determined to possibly be eligible for benefits; and determined not to be eligible for benefits; (iv) the actions taken on behalf of such children to apply for such benefits where they have been determined to be possibly eligible, including the number and type of applications filed and approved and the number of appeals filed; (v) the

percentages of such children determined to be eligible for SSI, RSDI and veterans benefits; (vi) of all such children receiving SSI, RSDI or veteran's benefits, the number of children for whom the department is the representative payee, the number of children for whom the parent or guardian is the representative payee, and the number of children for whom another interested person is the representative payee; and (vii) the savings tools used by the department to conserve for transition the benefits of such children receiving SSI, RSDI and veterans benefits and the frequency and degree to which such tools were employed for such children during the annual review period.

(h) In administering the benefits of young adults ages 18 to 22 for whom the department is acting as a representative payee or fiduciary, the department shall comply with the requirements for children under subsections (a) through (g).

SECTION 5. Not later than 90 days after the effective date of this act, the secretary of the executive office of health and human services shall promulgate regulations as necessary to implement section 23C of chapter 119 of the General Laws, as inserted by this act.