

HOUSE No. 4704

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 3, 2024.

The committee on Children, Families and Persons with Disabilities, to whom were referred the petition (accompanied by bill, Senate, No. 65) of Joanne M. Comerford and Liz Miranda for legislation to protect benefits owed to foster children; and the petition (accompanied by bill, House, No. 157) of Tricia Farley-Bouvier and others relative to protecting benefits owed to foster children, reports recommending that the accompanying bill (House, No. 4704) ought to pass.

For the committee,

JAY D. LIVINGSTONE.

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**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:

1 SECTION 1. Section 21 of chapter 119 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting after the definition of “Appropriate Services”
3 the following definition:-

4 “Benefits”, benefits under Title XVI of the Social Security Act, also referred to as
5 “Supplemental Security Income” or “SSI”; benefits under Title II of the Social Security Act, also
6 referred to as “Retirement, Survivors or Disability Insurance Benefits” or “RSDI”; or other
7 federal benefits.

8 SECTION 2. Section 21 of chapter 119, as so appearing, is hereby further amended by
9 inserting after the definition of “Relative” the following definition:-

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

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

14 (j) The department shall comply with section 23D, by providing benefit management
15 services to children and young adults in the department's care, custody, or responsibility,
16 including eligibility screening, representative payee or fiduciary assistance, notice, benefits
17 accounting, conservation of benefits and other services relative to benefits.

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

20 Section 23D. (a) When a child is placed in foster care under a voluntary placement
21 agreement or court-ordered custody, the department shall make all reasonable efforts to identify
22 within 60 days of the child being committed to custody of the department whether the child is
23 already receiving or may be eligible to receive benefits. In reviewing eligibility, the department
24 shall consult with the parents and others who may have information about the child's eligibility.
25 If the department determines, or has cause to believe, that the child may be eligible for benefits,
26 it shall apply for benefits on the child's behalf. If the agency administering such benefits denies
27 the application, the department may appeal the decision. The department shall review cases of
28 children in foster care annually to determine whether the child may have become eligible for
29 benefits after the initial assessment. DCF will only seek federal foster care reimbursement for a
30 child if such reimbursement will not impact the child's eligibility for benefits or the amount of
31 benefits.

32 (b) If the child is already receiving benefits prior to entering department custody, the
33 department may apply to be the child's representative payee or fiduciary. If the department is

34 applying for benefits for the child, the department may also apply to be the representative payee
35 or fiduciary. Where the goal is reunification, the department shall consider whether applying to
36 become the child's representative payee or fiduciary will undermine the goal of reunification and
37 be contrary to the child's best interests.

38 (c) The department shall provide timely notice for each of the following events:

39 (i) The department submits an application for benefits;

40 (ii) The department submits a request to become the child's representative payee;

41 (iii) the department receives notice of the agency's decision regarding benefits including
42 denial, termination or reduction in benefits;

43 (iv) the department decides whether or not to appeal an adverse determination, including
44 the outcome of any appeal filed; and

45 (v) the department receives notice of an eligibility redetermination.

46 Notice shall be provided to counsel for the child, as well as counsel for the parent or
47 parents or legal guardian or guardians, except that no notice shall be provided to a parent for
48 whom a decree to dispense with consent to adoption has been entered under paragraph 4 of
49 section 26 of chapter 119.

50 The notice provisions of this section 23D of chapter 119 of the General Laws shall go
51 into effect 18 months after the enactment of this act. Until the effective implementation date, the
52 department shall make best efforts to ensure compliance with the notice requirements of section
53 23D of chapter 119 of the General Laws.

54 (d) When the department is the child's representative payee or fiduciary, it shall maintain
55 an accounting of the child's benefits, and shall make available to child's counsel current
56 accounting information electronically or by other means. The accounting information shall
57 include (1) the amount and source of benefits collected by the department and credited to any
58 account maintained on behalf of the child; (2) the balance of any account maintained on behalf of
59 the child; (3) any amounts deducted by the department and the reasons for the deductions; and
60 (4) information regarding all the child's assets and resources, including benefits, insurance, cash
61 assets, trust accounts, and earnings if such assets or resources are controlled by the department.
62 The department shall provide such accounting information to the court at permanency hearings,
63 at other court proceedings, as necessary, or upon request.

64 (e) If the department is the child's representative payee or fiduciary, the Department shall
65 not use such benefits to reimburse the Commonwealth for the child's placement in foster care. If
66 the child is receiving SSI benefits, the department shall ensure that any funds retained on the
67 child's behalf are kept in a manner that does not exceed any federal asset or resource limit that
68 would affect the child's eligibility to continue receiving SSI benefits. Benefits held by the
69 department as a representative payee or fiduciary may be spent on the child's unmet needs,
70 which would not ordinarily be funded by another source, subject to program rules for the use of
71 such benefits, or otherwise conserved for the child. Any funds administered for SSI recipients
72 above the federal asset or resource limits shall be conserved in an Achieving a Better Life
73 Experience (ABLE) account, authorized by Section 529A of the Internal Revenue Code of 1986,
74 or another account for the child determined not to interfere with federal asset or resource limits
75 for any other federal means-tested benefit program. If the child is not receiving SSI or other
76 federal means-tested benefits with an asset or resource limit, the department shall place excess

77 funds in an interest-bearing account or other savings or investment vehicle for the benefit of the
78 child. If the department is the child's representative payee or fiduciary and receives retroactive
79 benefits for the child, those funds shall be kept as required by the program rules of the agency
80 administering such benefits.

81 (f) The department shall take steps to conserve the benefits of children receiving benefits
82 under this paragraph to assist them in the transition to adulthood and living independently. The
83 department shall establish accounts as specified in subsection (e) in conserving a child's benefits.
84 The department shall work actively with the agency administering such benefits and the child to
85 ensure that when the child leaves foster care, becomes eligible for direct payment, or another
86 representative payee is identified, all payments of benefits or conserved funds shall be (1)
87 returned to the agency following program rules; or (2) upon agreement by the agency, if
88 necessary, transferred to the child or to a new representative payee or fiduciary.

89 (g) The department shall provide the child with ongoing financial information regarding
90 the eligibility for benefits, as well as the existence, amount, availability, use, and limitations of
91 funds conserved for the child, beginning at 14 years of age and tailored to the individual child.
92 For youth ages 17 of age or older, financial information shall also include basic assistance with
93 understanding budgeting and money management, checking and savings accounts, tailored to the
94 individual child.

95 (h) The department shall provide the child with ongoing financial literacy training and
96 support, beginning at 14 years of age and tailored to the individual child. This program may
97 include, but need not be limited to, topics such as: budgeting; money management; informed
98 decision-making; banking, checking and savings accounts; credit card counseling; managing

99 debt; planning for financial security and stability; financing post-secondary education or training;
100 long term asset-building; and community and agency services. Financial literacy resources
101 concerning the use of conserved funds shall also be made available to all parents, guardians, and
102 adoptive parents gaining access to funds conserved by the department. The financial literacy
103 requirements set forth in M.G.L. c. 119, Sec 23D(h) shall go into effect 18 months after the
104 enactment of this act. Until the effective implementation date, the department shall make best
105 efforts to ensure compliance with the financial literacy requirements set forth in this paragraph.

106 (i) The department shall provide an annual report to the house and senate committees on
107 ways and means, the committee on children, families and persons with disabilities, the clerks of
108 the house and the senate and the secretary of the executive office of administration and finance,
109 not later than December 31; provided, the report shall set forth: (1) the numbers of children in the
110 department's care and custody receiving benefits for which the department is the representative
111 payee or fiduciary; (2) the numbers of children in the department's care or custody who are
112 receiving SSI, RSDI or other federal benefits; (3) the amount of benefits being conserved by the
113 department; and (4) the number and type of accounts established by the department on behalf of
114 such children.

115 (j) To the extent such data is available, the report shall also set forth the numbers of
116 children in the department's care or custody, (1) who were screened for eligibility for benefits;
117 and whether such screening occurred within 60 days of being committed to the department's
118 custody, and if not, the date of the screening and reasons for the delay; (2) who were already
119 receiving benefits after screening; and (3) for whom the department submitted applications for
120 benefits, by type of application, and the outcome of those applications, including the number of
121 appeals filed; providing however, that if such data is not available, the department shall provide

122 information to such committees as to its ongoing efforts to be able to gather and report upon such
123 information.

124 (k) In administering the benefits of young adults ages 18 to 22 for whom the department
125 is acting as a representative payee or fiduciary, the department shall comply with the
126 requirements for children under subsections (a) through (j). The department shall continue to
127 provide financial literacy training under paragraph (h) to young adults who become eligible for
128 direct payment of benefits and continue to receive young adult services from the department.

129 SECTION 5. Not later than 90 days after the effective date of this act, the secretary of the
130 executive office of health and human services shall promulgate regulations as necessary to
131 implement section 23D of chapter 119 of the General Laws, as inserted by this act. The notice
132 provisions of this section 23D of chapter 119 of the General Laws shall go into effect 18 months
133 after the enactment of this act. Until the effective implementation date, the department shall
134 make best efforts to ensure compliance with the notice requirements of section 23D of chapter
135 119 of the General Laws. The financial literacy requirements set forth in subsection (h) of
136 section 23D of chapter 119 shall go into effect 18 months after the enactment of this act. Until
137 the effective implementation date, the department shall make best efforts to ensure compliance
138 with the financial literacy requirements set forth in said subsection (h).