

SENATE No. 2803

The Commonwealth of Massachusetts

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

SENATE, June 6, 2024.

The committee on Children, Families and Persons with Disabilities, to whom was referred the petitions (accompanied by bill, Senate, No. 68) of Joanne M. Comerford, Sean Garballey and Vanna Howard for legislation to establish a bill of rights for children in foster care; and (accompanied by bill, House, No. 164) of Michael J. Finn and others relative to establishing a bill of rights for children in foster care, report the accompanying bill (Senate, No. 2803).

For the committee,
Robyn K. Kennedy

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**In the One Hundred and Ninety-Third General Court
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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:

1 SECTION 1. Chapter 119 of the General Laws, as appearing in the 2022 Official Edition,
2 is hereby amended by inserting after section 23C the following section:-

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

5 “Child” means any child, youth or young adult who is under the custody, care or
6 responsibility of the department.

7 “Child-specific family” means a family that includes a non-kinship individual who is
8 significant in a particular child’s life, or (2) fictive kin to whom the child and/or parent(s) ascribe
9 the role of family based on cultural and affectional ties or individual family values.

10 “Department” means the Department of Children and Families.

11 “Kin” means an individual(s) who is either (1) related by blood, marriage or adoption.

12 (b) The department shall present a document listing the rights enumerated in subsection
13 (d) to the foster parent of each child in its care when the child enters care and annually thereafter.
14 The department shall explain these rights to the child in an age-appropriate way when the child
15 enters the department's care. The department shall ensure the document is translated into the
16 language spoken by the child. The document shall be posted in all congregate care facilities in a
17 public space where all residents have access, prominently on its website, and in all area offices.
18 The department shall present the document for continual use to the child's attorney and parent(s)
19 and display the document prominently on its website and in all area offices.

20 (c) The department shall amend any regulations or policies that may conflict with this
21 section in a timely fashion.

22 (d) Each child has the following rights:

23 (1) Safety and Security:

24 (i) Each child shall be treated with dignity, respect, privacy and consideration.

25 (ii) Each child shall not be discriminated against, physically hurt or harassed by
26 department staff, foster parents, the child's attorney, or service providers on the basis of religion,
27 race, color, creed, gender, gender identity, gender expression, sexual orientation, national origin,
28 age, disability, culture, language, or ethnicity.

29 (iii) Each child has the right to a placement that is gender-affirming and free from
30 physical, psychological, sexual, emotional or other abuse, neglect or exploitation.

31 (iv) Each child shall have the right to access personal possessions, personal space and
32 privacy with allowance for safety.

33 (v) Each child shall have autonomy of all pictures of themselves as appropriate.

34 (vi) Each child shall have access to healthy food, clothing, personal care products and
35 items that preserve and promote the child's family's religion and culture and the child's gender-
36 identity as well as the child's specific hair and body needs.

37 (vii) Each child shall be placed in a safe and nurturing environment and receive
38 appropriate care and treatment in the least restrictive setting available that shall consider the
39 child's needs and addresses their trauma history. The environment shall include the child's
40 culture, religion and identity as nearly as possible to the home of origin. No child shall be placed,
41 housed or detained in a secure department of youth services placement based on the department
42 of children and families' inability to provide an available and appropriate foster placement. The
43 department shall not advocate for bail of any amount for children in its care or custody.

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

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

55 (2) Connections to Family, Community and Identity:

56 (i) Each child has the right to know, understand, learn about and develop the child's
57 racial, cultural, linguistic, gender, religious and ethnic identity, including but not limited to
58 clothing, hair, other cultural expressions of identity, body care and to a placement that will
59 provide or maintain the connections necessary to preserve and promote the child's identities. The
60 department should make a best effort to ensure that the placement will preserve and maintain the
61 child's language of their home.

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

67 (iii) Each child has the right for the department to exercise due diligence in identifying
68 and locating kin if a placement is required and to give full and fair consideration to all potential
69 kin, and then a child-specific family unless harmful for the safety and well-being of the child.

70 (iv) Each child has the right to be placed with the child's siblings or half-siblings unless
71 the joint placement is contrary to the safety, well-being, or path to permanency for any of the
72 siblings provided the foster parent is willing to accept the child. The department shall work to
73 address barriers to placing siblings together. The department shall ensure that the child be placed
74 in as close proximity as possible to siblings if unable to be placed in the same setting and shall
75 facilitate frequent and meaningful contact regardless of geographic barriers if not harmful to the
76 safety and well-being of the child.

77 (v) Each child shall have involvement as appropriate with family members and siblings
78 and should participate in the development of visitation plans. Each child shall have the right to
79 family time of a duration and frequency and in a setting that is consistent with the developmental
80 needs of the child.

81 Each child shall have the right to other forms of parental contact, including but not
82 limited to mail, phone calls, videoconferences, email and texts if they have their own phone and
83 if not harmful to the safety or well-being of the child. All placements including congregate care
84 programs shall facilitate access to virtual forms of contact.

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

88 (vii) Each child has the right to be treated as a family member in a foster family and,
89 whenever possible, be included in a foster family's activities, holidays and traditions taking into
90 consideration factors that include but are not limited to the child's age and trauma history. Each
91 child shall have the opportunity to be included in the daily activities of the family to maintain the
92 most normal daily routine and environment as possible.

93 (3) Health Care and Accessibility:

94 (i) Each child has the right to access appropriate, timely gender-affirming medical,
95 reproductive, dental, vision, mental and behavioral health services regularly and more often as
96 needed.

97 (ii) Each child has the right to discuss any questions or concerns the child has relating to
98 medication or other physical, mental or behavioral health treatment with the department or a
99 healthcare provider and to understand the medications and/or treatment provided, its purposes
100 and side effects in a developmentally appropriate way.

101 (iii) Each child has the right to out-of-home placements that are accessible for any
102 disabilities the child may have and to reasonable accommodations. Any appropriate reasonable
103 accommodation(s) will be provided in a timely manner and in such a way as to protect the
104 privacy of the child. Each child also has a right to discuss any disabilities with the department
105 and request adaptive equipment, auxiliary aids or services.

106 (4) Education, Employment and Social Connections:

107 (i) Each child has the right to attend school regularly, educational stability, educational
108 supports and to an education that fits their needs under federal and state law.

109 (ii) Each child has the right for the department to prioritize school stability by (a) placing
110 children as close to home as possible and, (b) maintaining the child at their school of origin
111 unless it is found through a Best Interest Determination, not to be in their best interest to do so.

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

116 (iv) Each child has the right to achieve developmentally appropriate, age-related
117 milestones, including but not limited to obtaining a driver's license, opening bank accounts,
118 birthday celebrations, religious ceremonies or graduations.

119 (v) Each child shall be informed of and supported in accessing all available services
120 through the department, including but not limited to assistance in acquiring life skills,
121 educational assistance including but not limited to tuition and fee waivers for post-secondary
122 education, financial support, housing support, assistance with credit reports and resolving
123 inaccuracies, training and career guidance to accomplish personal goals and prepare for the
124 future, employment supports available to children in care, and adaptive equipment or auxiliary
125 aids and supports.

126 (vii) The department shall provide each child age-appropriate education on financial
127 preparedness, job readiness, appropriate use of social media, education options, healthy
128 relationships, physical, mental, sexual and reproductive health.

129 (5) Resources and Supports:

130 (i) Each child has the right to reasonable access to a caseworker who can make case plan
131 decisions and shall include the opportunity for the child to have private conversations regarding
132 any questions, grievances, or concerns. Reasonable access shall include the department's social
133 worker and supervisor's office telephone numbers and email addresses as well as, at a minimum,
134 monthly visits by the department. The department shall also provide the child an emergency
135 contact number for a department staff member who can make decisions and take action with
136 respect to the child during non-business hours.

137 (ii) Each child shall have the right to participate as developmentally appropriate in the
138 development and review of the action and visitation plans, their Individualized Education
139 Program and best interest determination and shall be consulted as the department formulates or
140 updates said items. Children aged 12 and older shall also be presented with the action or service
141 plan for their review, written feedback and signature. A child has the right to request that their
142 foster parent(s) participate at foster care reviews and to object to their participation if a child
143 does not want them attend.

144 (iii) Each child has the right be informed in a developmentally appropriate way of all
145 documents that they are asked to sign by the department and/or its agents/contractors/providers
146 including adoption consent if over the age of 12, the Voluntary Agreement for Placement if at
147 least 18 years of age and documents of similar importance. A child shall have their attorney
148 present whenever asked to sign any documents by the department or its
149 agents/contractors/providers, or the document shall be provided in a timely fashion to the child's
150 attorney to give an opportunity for review it in advance of presenting it for signature.

151 (iv) Each child has the right to be informed in a developmentally appropriate way of the
152 reason(s) the department became involved with the child's family, why the child came into care
153 and why the child is still in care. The department shall offer support through the review process
154 to address any possible trauma caused by a child's access to their case files. Upon turning 18, the
155 youth will have the right to access their case files, barring any confidential or legally privileged
156 information.

157 (v) Each child aged 12 or older has the right to be included in foster care review
158 meetings, permanency hearings and lead agency team meetings except for those parts that

159 involve information that is confidential regarding a previous or future adoptive, kinship or foster
160 parent under federal or state law, unless documented by court order that participation would be
161 detrimental to the child. The department shall provide that child the ability to offer input to the
162 department before a final decision is made. If the child is unable to attend in person, by phone or
163 video, the child shall have the right to submit a written statement to be considered at the meeting
164 or hearing.

165 (vi) Each child shall be provided adequate notice by the child's attorney of all court
166 hearings. To the extent possible, the notice shall include the date, time and location of the
167 hearing. The department shall ensure the child understands the child's right to attend court
168 hearings and speak to the judge regarding any decision that may have an impact on the child's
169 life.

170 (vii) Each child has the right to access their medical, dental and educational records held
171 by the department as well as their personal documents, including but not limited to social
172 security card, birth certificate, health insurance information, state identification card, driver's
173 license, passport, and documentation related to their immigration status, including work
174 authorization in a developmentally appropriate way. When a child leaves the care of the
175 department, they shall be given copies of medical, dental and educational records held by the
176 department and original copies of all personal documents. If the child's name and/or gender
177 marker has changed, the department must ensure that all relevant legal documents, including
178 birth certificate, state identification card, driver's license, and immigration documentation are
179 updated and corrected before the child departs care. The department must further provide contact
180 information for providers who are currently providing care for the child. The department shall
181 begin planning to return the documents to the child at least 30 days before the child leaves care

182 to be able to give the documents to the child on the day of the child's departure. As soon as a
183 child in the department's care is eligible the department must assist the child in obtaining a state
184 identification card if the child does not have one and wants one.

185 (viii) Each child has the right to an attorney when the department seeks custody of the
186 child and to meaningful contact with said attorney including at foster care reviews. Each child
187 shall be informed, when appropriate, by the department of the name and phone numbers of the
188 assigned attorney. Each child and foster parent shall be informed, when appropriate, by the
189 department that the child can contact the attorney and that there are processes to file a complaint
190 as well as to request a change of attorney. The department shall notify the child's attorney of
191 each child's placement address and phone number no later than 24 hours after the time of
192 placement or placement change.

193 (ix) Each child shall be informed by the department of the clothing, birthday, holiday and
194 emergency payments to foster parents and placement providers for children in placement and
195 that the child has the right to have those payments used to meet the child's needs. A child over
196 the age of 14 who has a bank account may receive direct payment from the department through
197 their attorney or the department upon request.

198 (x) Each child's attorney shall be informed if the department applies for any benefits on
199 behalf of the child, including but not limited to benefits under Title XVI of the Social Security
200 Act, also referred to as "Supplemental Security Income;" benefits under Title II of the Social
201 Security Act, also referred to as "Retirement, Survivors or Disability Benefits," and if the
202 department applies to be the representative payee for such benefits. The department shall
203 preserve all of such funds received in an interest bearing account belonging to the child so the

204 funds are available for the child's benefit and use when they turn 18 and shall not use such funds
205 for the customary costs of foster care. If necessary, the department shall preserve said funds in an
206 ABLE (Achieving a Better Life Experience) account authorized by Section 529A of the Internal
207 Revenue Code of 1986, or another trust account for the child determined not to interfere with SSI
208 or asset limitations for any other benefit program. The notice provisions of this subsection (x)
209 shall go into effect 18 months after the passage of this legislation. Until the effective
210 implementation date, the department will make best efforts to ensure compliance with the notice
211 requirements set forth in this subsection (x).

212 (6) Transition Age Youth

213 (i) At the age of 14, the department shall begin collaborating with the child to plan their
214 transition from foster care to adulthood. Transition planning should cover all areas needed for a
215 youth to be stable and successful as an adult, including but not limited to, planning for visits
216 and/or contact with parents and siblings; building relationships with other caring adults,
217 particularly with life-long connections; making an education plan including post-secondary
218 education; finding vocational, employment and career counseling and placement; securing stable
219 housing; developing expertise in daily living skills; maintaining physical, reproductive and
220 mental health care and health insurance; learning how to access community resources and public
221 benefits and services; connecting with other state agencies; developing financial skills including
222 but not limited to, understanding budgeting and money management as well as checking and
223 savings accounts; and receiving, understanding and correcting, if applicable, his/her consumer
224 credit report. The department shall provide all associated services and supports necessary for
225 such planning.

226 Every child shall have the right to a transition plan at least one year prior to turning 18
227 years old crafted by the department at the direction of the transition age youth, regardless
228 whether they will continue under the responsibility of the department upon turning 18, that
229 includes personalized, detailed, tangible, available and clear options for resources for meeting
230 their basic needs including, but not limited to, housing, education and vocational supports which
231 fulfill the requirements of 42 U.S.C. s.675 (5)(H), as amended.

232 (ii) Every child who turns 18 while in custody of the department has the right to continue
233 under the responsibility of the department and receive young adult services until turning 23,
234 pursuant to federal requirements. Each child shall be offered a Voluntary Placement Agreement
235 by the department in the month prior to their turning 18 years old. The Voluntary Placement
236 Agreement shall be developed together with the child during permanency and transition
237 planning. Every child shall be made aware of this right and any federal requirements governing
238 services for transition age youth throughout the transition planning process.

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

241 (iv) The department shall have the responsibility of identifying all appropriate housing
242 opportunities available to a youth turning 18, a young adult leaving the care of the department
243 after the age of 18, and a youth who re-enters the department.

244 (7) Remedies

245 (i) Each child shall have the right to have these rights enforced.

246 (ii) If the child, the child's attorney or the child's foster parent or placement provider
247 believes any of the above rights have been violated, the child shall have the right to discuss the
248 alleged violation with the department, file a complaint with the department's ombudsman, file a
249 complaint with the office of the child advocate, request a fair hearing or petition the Juvenile or
250 Probate and Family Court for a determination and enforcement of these rights. The department
251 shall not retaliate against or punish a child, an attorney, a foster parent or placement provider for
252 asserting this right. If the department, ombudsman, the office of the child advocate or the court
253 determines the child's rights have been violated, the department shall resolve the violation as
254 soon as practicable. The department must provide the child with contact information for the
255 ombudsman, the office of the child advocate and the court.

256 (e) The commissioner of the department of children and families or designee, shall
257 submit a report to the office of the child advocate, house and senate committees on ways and
258 means, the joint committee on children, families and persons with disabilities, and the house and
259 senate clerks' offices on the number and types of complaints or alleged violation received
260 pursuant to this act.