

SENATE No. 68

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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:	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/24/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/30/2023</i>

SENATE No. 68

By Ms. Comerford, a petition (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. 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:

1 SECTION 1. Chapter 119 of the General Laws, as appearing in the 2020 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”, any child, youth or young adult in the care or custody of the department.

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

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

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

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

17 (1) Safety and Security:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77 (3) Health Care and Accessibility:

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

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

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

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

89 (4) Education, Employment and Social Connections:

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

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

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

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

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

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

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

113 (5) Resources and Supports:

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

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

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

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

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

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

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

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

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

155 (6) Transition Age Youth

156 (i) Every child who turns 18 while in custody of the department is automatically signed
157 out of care of the department but has the right to sign back into department care prior to turning
158 23, pursuant to federal requirements. Every child shall be made aware of this right throughout
159 the transition planning process as well as any federal requirements governing services for
160 transition age youth.

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

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

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

170 (7) Remedies

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

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

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