

SUMMARY OF BILL RE EXTENDING COURT JURISDICTION AND RIGHT TO COUNSEL TO INCLUDE 18 -22 Y.O.'S

On October 15, 2010, the Governor signed Bill H5028, a supplemental budget for FY 2011. The Act amends sections 21, 23, 29B and 29C of Chapter 119, to extend the jurisdiction of the Court, and the right to counsel, to certain young adults aged 18 to 22 years old who continue to receive voluntary services from DCF. The statute is intended to implement portions of the federal 2008 Fostering Connections to Success and Increasing Adoptions Act, which allows states the option to receive Title IV-E foster care reimbursement for young adults age 18 to 22. It is effective January 3, 2011.

The Act contains the following provisions.

- Under G.L. c. 119, § 23(f), DCF “shall” offer to continue responsibility for any young adult who is under the care, custody or responsibility of DCF at age 18, including, but not limited to, those who meet one of the criteria established by federal law. This includes young adults who are (1) completing high school or a GED program; (2) attending post-secondary or vocational education; (3) participating in a program or activity designed to promote, or remove barriers to, employment; (4) employed for at least 80 hours per month; or (5) incapable of attending school or working due to a medical condition. See 42 USC § 675(8)(B)(iv). DCF’s continued responsibility is conditioned upon the young adult’s express written consent.
- Young adults under the continued responsibility of DCF have a right to counsel. The Court must hold annual permanency hearings and must make reasonable efforts determinations as required under G.L. c. 119, §§ 29B and 29C.
- 90 days before DCF terminates responsibility for a young adult (either at age 18 or later), DCF must assist the young adult in developing a transition plan that complies with the requirements of federal law. Under federal law, the transition plan must be “personalized at the direction of the child, include[.] specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and [be] as detailed as the child may elect.” In addition, the transition plan must include information about the importance of having a health care proxy, and provide the young adult with the opportunity to execute such a document.
- Once a person reaches age 17 years and 9 months, his or her permanency plan must “address the status of and the topics of the transition plan” described in the preceding paragraph. Further, the court must retain jurisdiction over the case until it finds, after a hearing at which the person is present (unless he or she chooses otherwise), that a satisfactory transition plan has been provided.

- The Act applies to young adults who turned 18 before January 3, 2011, provided they are under the responsibility of DCF on January 3 and are eligible under Title IV-E of the Social Security Act for foster care maintenance payments. The Court that last had jurisdiction over the case must hold a permanency hearing for the young adult within 180 days. Counsel will need to be reappointed for these young adults. There is a Request to Re-open NAC form on our website at http://www.publiccounsel.net/Practice_Areas/cafl_pages/forms.html.

CAFL/CPCS will be developing new Performance Standards to guide counsel assigned to represent these young adults.