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AS CORRECTED
HOUSE No. 5028
The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 27, 2010.

Excerpts of Provisions Concerning Extension of Jurisdiction Beyond Age 18

SECTION 9. Section 6A of chapter 18B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The commissioner shall appoint a foster care review director who shall establish an independent foster care review unit within the department. The director shall appoint, subject to the approval of the commissioner, the members of the unit who shall be employees of the department, shall devote their full time exclusively to case reviews and shall convene and conduct administrative case reviews of the status of each child in the care of the department and young adults who remain under the responsibility of the department pursuant to subsection (f) of section 23 of chapter 119, at least once every 6 months. The reviews shall be performed by panels consisting of 1 member of the unit and 2 other persons, at least 1 of whom shall not be an employee of the department and represent to the maximum extent feasible the various socioeconomic, racial and ethnic groups served by the panel. No panel member shall be the social worker with direct case responsibility for the child or young adult whose case is being reviewed or the immediate supervisor of the social worker. Such reviews shall be held at convenient locations throughout the commonwealth and shall be chaired by the member of the panel from the unit. Panel members shall have sufficient experience or training to enable them to make recommendations.

SECTION 10. Said section 6A of said chapter 18B, as so appearing, is hereby further amended by inserting after the word “agent”, in line 29, the following words:- , or live permanently with kin or another permanent planned living arrangement.

SECTION 18. Section 21 of chapter 119 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following definition:- “Young adult”, a person between the ages of 18 and 22.

SECTION 19. Section 23 of chapter 119 of the General Laws is hereby amended by striking out subsection (f), as so appearing, and inserting in place thereof the following subsection:-

(f) The department shall offer to continue its responsibility to any young adult who is under the custody, care, or responsibility of the department including, but not limited to, those persons who meet any of the criteria set forth in 42 USC § 675(8)(B)(iv): (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully

developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person. The department's continued responsibility for such persons is contingent upon the express written consent of the person or their guardian unless: (i) before reaching the age of 18, the person had an intellectual disability and was declared mentally incompetent under clause (3) of subsection (a) while under the responsibility of the department; or (ii) the person is under the responsibility of the department pursuant to section 5-305 of chapter 190B. The purposes and conditions of such responsibility may be reviewed and revised or terminated by either the person or the department; provided, however, that within 90 days before the termination of such responsibility, the department shall provide the person with assistance and support in developing a transition plan which fulfills the requirements of 42 USC § 675(5)(H). If after termination the person requests that the department renew its responsibility therefor, the department shall make every reasonable attempt to provide a program of support which is acceptable to the person and which permits the department to renew its responsibility; provided, however, that the department may require the person to meet 1 of the criteria set forth in 42 USC § 675(8)(B)(iv). If the department renews its responsibility, all other provisions of this subsection shall apply. The department shall report annually to the child advocate, the senate and house chairs of the joint committee on children, families and persons with disabilities and the chairs of the senate and house committees on ways and means on the number of persons it serves and declines to serve under this subsection.

SECTION 20. Section 29 of said chapter 119, as so appearing, is hereby amended by striking out the first two full paragraphs and inserting in place thereof the following two paragraphs-

The following persons shall have and shall be informed of the right to counsel, and the court shall appoint counsel for all such persons if the person is not able to retain counsel: (i) an adult who is under the responsibility of the department under clause (1) of subsection (a) of section 23; (ii) a child who is before the court under clauses (1) and (3) of said subsection (a) of said section 23, sections 24 to 27, inclusive, or section 29B; (iii) a child in a custody proceeding where the department or a licensed placement agency is a party; and (iv) any young adult to whom subsection (f) of section 23 applies.

Whenever the department or a licensed child placement agency is a party to child custody proceedings, the parent, guardian or custodian of the child, or a parent or guardian of an adult who is the responsibility of the department under clause (3) of subsection (a) of section 23: (i) shall have and be informed of the right to counsel at all such hearings, including proceedings under sections 5-201, 5-204 or 5-206 of chapter 190B, and that the court shall appoint counsel if the parent, guardian or custodian is financially unable to retain counsel; and (ii) shall have and be informed of the right to a service plan or case plan for the child and the child's family, or an adult who is the responsibility of the department under clause (3) of subsection (a) of section 23, which complies with applicable state and federal laws and regulations for these plans. Any young adult to whom subsection (f) of section 23 applies is also entitled to such service plan or case plan. The probate and family court and the juvenile court departments of the trial court shall establish procedures for: (i) notifying the parent, guardian or custodian of these rights; and (ii) appointing counsel for an indigent parent, guardian or custodian within 14 days of a licensed child placement agency filing or appearing as a party in any such action. The department or agency shall provide a copy of the service or case plan to the parent, guardian or custodian of the child or of an adult who is the responsibility of the department under clause (3) of subsection (a) of section 23, or to an adult who is the responsibility of the department under clause (3) of subsection (a) of section 23 or section 5-305 of chapter 190B, or any young adult to whom

subsection (f) of section 23 applies and to the attorneys for all parties appearing in the proceeding within 45 days of the department or agency filing an appearance in such proceeding. Thereafter, any party may have the original or changed plan introduced as evidence, and with the consent of all parties the plan shall be filed with the court. Notwithstanding this section, the court may make such temporary orders as may be necessary to protect the adult who is under the responsibility of the department under clause (3) of subsection (a) of section 23 or the child and society.

SECTION 21. Said chapter 119 is hereby further amended by striking out section 29B and inserting in place thereof the following section:-

Section 29B. (a) Except as provided in subsection (d), within 12 months of the original commitment, grant of custody, or transfer of responsibility of a child to the department by a court of competent jurisdiction, and not less than every 12 months thereafter while the child remains in the care of the department, the committing court shall conduct a permanency hearing, in accordance with rules established by the chief justice for administration and management, to determine and periodically review thereafter the permanency plan for the child. The plan shall address whether and, if applicable, when: (i) the child will be returned to the parent; (ii) the child will be placed for adoption and the steps the department will take to free the child for adoption; (iii) the child will be referred for legal guardianship; (iv) the child will be placed in permanent care with relatives; or (v) the child will be placed in another permanent planned living arrangement. The department shall file a permanency plan prior to a permanency hearing that shall address the above placement alternatives. The court shall consult with the child in an age appropriate manner about the permanency plan developed for the child.

(b) The committing court shall continue to hold annual permanency hearings as described in subsection (a) for young adults to whom subsection (f) of section 23 applies. The young adult shall be entitled to counsel as set forth in section 29.

(c) If a child or a young adult is not to be returned to the child or young adult's parents, the permanency plan shall consider in-state and out-of-state placement options. In the case of a child placed in foster care outside the state in which the home of the parents of the child is located or a young adult in an out-of-state placement, the permanency plan shall also address whether the out-of-state placement continues to be appropriate and in the best interests of the child or young adult. In the case of a child who has attained age 16 or any young adult, the permanency plan shall also address the services needed to assist the child or young adult in making the transition from foster care to independent living; and provided further, that the court shall consult with the child or young adult in an age-appropriate manner about the permanency plan. If a person in the custody of or under the responsibility of the department has attained the age of 17 years and 9 months, the permanency plan shall also address the status of and the topics of the transition plan required under 42 USC § 675(5)(H); and provided further, the court shall retain jurisdiction until it finds, after a hearing at which the person is present unless the person chooses otherwise, that a satisfactory transition plan has been provided for the person.

(d) In conducting a permanency hearing, the court may make any appropriate order as may be in the child or the young adult's best interests including, but not limited to, orders with respect to care or custody. At the same time, the court shall consider the provisions of section 29C, and shall make the written certification and determinations required by said section 29C. The health and safety of the child or young adult shall be of paramount, but not exclusive, concern.

The permanency hearing for a child or young adult shall be held within 30 days of a hearing at which a court determines that reasonable efforts to preserve and reunify families are not required pursuant to section 29C. The court may, however, make such determination at the time of the permanency hearing.

If continuation of reasonable efforts to return a child or young adult safely to the child's parent or guardian are found to be inconsistent with the permanency plan for the child or young adult or if reasonable efforts are not required pursuant to section 29C, or in the case of any young adult to whom subsection (f) of section 23 applies, the department shall make reasonable efforts to place the child or young adult in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child or young adult. In subsequent permanency hearings held on behalf of the child or young adult, the court shall determine whether the department has made such efforts in accordance with section 29C.

(e) A child, parent of a child, guardian, young adult, or the department may appeal to the appeals court from the determination or order of the trial court. The claim of appeal shall be filed in the office of the clerk or register of the trial court within 30 days following the court's determination or order. Thereafter, the appeal shall be governed by the Massachusetts Rules of Appellate Procedure. The scope of appellate review shall be limited to abuse of judicial discretion.

SECTION 22. Section 29C of said chapter 119, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

If a young adult continues under the responsibility of the department pursuant to subsection (f) of section 23, the committing court shall continue to annually determine whether the department or its agent has made reasonable efforts to achieve the permanent plan approved by the court under section 29B.

SECTION 133. Sections 9, 10 and 18 to 22, inclusive shall also apply to persons who, as of January 3, 2011, have attained the age of 18 and have not yet reached the age of 22, are, on January 3, 2011, under the responsibility of the department, and are eligible, or were eligible, on their eighteenth birthday, under section 472 of Title IV(E) of the Social Security Act, 42 U.S.C. § 672 for foster care maintenance payments. The court which last exercised jurisdiction as of the person's eighteenth birthday, shall schedule a permanency hearing within the first 90 days, and conduct such hearing within 180 days, after January 3, 2011 for persons who meet the aforementioned criteria.

SECTION 135. Sections 9, 10, 18 to 22, inclusive, and 133 shall be effective on January 3, 2011.