



Paula M. Carey
CHIEF JUSTICE

Commonwealth of Massachusetts

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MEMORANDUM

To: Judges of the Probate and Family Court
Registers of Probate
Chief Probation Officers

From: Hon. Paula M. Carey, Chief Justice

Date: March 21, 2011

Re: **Permanency Hearings For Young Adults in Child Welfare Cases in Probate and Family Court**

cc: Judicial Case Managers, Assistant Judicial Case Managers

On October 15, 2010, Governor Patrick signed into law changes to c.119 of the Massachusetts General Laws which require DCF to continue to provide educational and rehabilitative services to young adults in its care and custody, and to support those young people in preparing for their future outside the care of DCF under conditions agreed upon by both DCF and the young adult. A young adult is defined as a person between the ages of 18 and 22. In addition, permanency hearings for these young adults are required by the amendments to c.119 included in the outside sections of Chapter 359 of the Acts of 2010 (Supplemental Budget FY 10, October 15, 2010).

The chart below outlines procedures for scheduling these permanency hearings. The young adults impacted fall into three groups; those over 18 currently in DCF care, (third column in chart), those in DCF care who turned 18 after January 3, 2011, (first column in chart) and those who leave DCF care and return after they are 18, (second column in chart). There are slight differences in the procedures for each group. These are detailed below. For young adults who turned 18 prior to January 3, 2011, the permanency hearings must be held by approximately June 3, 2011. DCF will contact each court with a list of cases that require the permanency hearings before June.

Please feel free to contact Ilene Mitchell in the Administrative Office with any questions or comments.

Steps for Scheduling and Conducting Permanency Hearings	Children in Care of DCF Who Turn 18 while in DCF Care	Children in Care Who Turn 18 and Leave and Then Return	Young Adults Age 18-22 in DCF Care
If child's Date of Birth is:	18 after 1/3/2011	18 after 1/3/2011	18 on or before 1/3/2011
1. Identifying Young Adult and setting hearing date.	Will be identified at last permanency hearing before turning 18 at which child, if chooses, shall be present and next permanency hearing set for 6 months from previous hearing.	DCF will file affidavit with date young adult returned to care of DCF, file permanency plan, ask court to vacate dismissal, if necessary, and request hearing within 30 days of filing.	DCF will identify and give list of names to the court that entered final custody order and request hearing.
2. Register/ Court responsibilities	No less than 60 days prior to hearing, Court shall send notice of hearing to DCF, child's attorney, to parents or their attorneys unless parental rights terminated	Docket pleadings filed by DCF under original case file number and schedule in court where previously heard for hearing within 30 days of filing to consider permanency plan. DCF shall give notice to all parties or counsel of record.	Docket pleadings filed by DCF under original case file number and schedule for hearing to consider permanency plan. To be heard with siblings on case if still active. Notify DCF of hearing dates. DCF shall give notice to all parties or counsel of record.
3. Filing of Permanency Plan	30 days prior to hearing DCF shall file plan with Court with copies to all parties or counsel	With request for hearing, Permanency Plan filed by DCF.	30 days prior to hearing DCF shall file plan with Court with copies to all parties or counsel
4. Appointment of Counsel	Parties entitled to counsel. Counsel of record shall continue to represent child at permanency hearings.	Parties entitled to counsel. Court shall determine and contact last counsel for young adult, and reappoint unless that attorney declines, then follow normal procedure to appoint new counsel.	

Steps for Scheduling and Conducting Permanency Hearings	Children in Care of DCF Who Turn 18 while in DCF Care	Children in Care Who Turn 18 and Leave and Then Return	Young Adults Age 18-22 in DCF Care
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5. Notification of Hearing	DCF shall notify young adult prior to hearing of opportunity to attend, either verbally or in writing. Child's attorney will notify young adult.		
6. At the Permanency Hearing	Court will review plan and make reasonable efforts finding	If underlying case was dismissed, DCF attorney asks Court to vacate dismissal, review plan and make reasonable efforts finding.	
7. Child/ young adult in Court	Court shall consult with the young adult re: Permanency Plan. Young adult may choose to attend court or not.		
8. Court inquires re: Permanency Hearing Report	<p>Has young adult helped develop plan?</p> <p>If placed out of state, is placement there in best interest of young adult? Is placement appropriate?</p> <p>Does plan include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services?</p> <p>Is plan as detailed as the young adult may elect?</p> <p>Can young adult identify significant adult relationships or lifelong connections?</p> <p>Does young adult have information about how to obtain and have in place a power of attorney or health care proxy in case young adult becomes unable to make health care decisions?</p>		
9. Court must make a Reasonable Efforts Finding	Has DCF made reasonable efforts to achieve the permanent plan?		
10. Schedule Next Hearing	At least within 12 months and annually thereafter while in care.		
11. If Young Adult leaves care after age 18	If DCF notifies Court that young adult is no longer in care, then no more permanency hearings scheduled.		
12. When young adult turns 22	No further action required by Court.		

**Amendments to G.L. c. 119, § 29B in Chapter 359 of the Acts of 2010
(new language is highlighted):**

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 said chapter 119 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 2 paragraphs and inserting in place thereof the following 2 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, as so appearing, 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 under 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; provided, however, 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); provided, however, that 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 or young adult'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 the department's agent has made reasonable efforts to achieve the permanent plan approved by the court under section 29B.

P.L. 111-148 "The Patient Protection and Affordable Care Act" of Congress

SEC. 2955. INCLUSION OF INFORMATION ABOUT THE IMPORTANCE OF HAVING A HEALTH CARE POWER OF ATTORNEY IN TRANSITION PLANNING FOR CHILDREN AGING OUT OF FOSTER CARE AND INDEPENDENT LIVING PROGRAMS. (a) Transition Planning.--Section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)) is amended by inserting "includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney, health care proxy, or other similar document recognized under State law," after "employment services,". (b) Independent Living Education.--Section 477(b)(3) of such Act (42 U.S.C. 677(b)(3)) is amended by

adding at the end the following: ``(K) <<NOTE: Certification.>> A certification by the chief executive officer of the State that the State will ensure that an adolescent participating in the program under this section are provided with education about the importance of designating another individual to make health care treatment decisions on behalf of the adolescent if the adolescent becomes unable to participate in such decisions and the adolescent does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, whether a health care power of attorney, health care proxy, or other similar document is recognized under State law, and how to execute such a document if the adolescent wants to do so." ©) Health Oversight and Coordination Plan.--Section 422(b)(15)(A) of such Act (42 U.S.C. 622(b)(15)(A)) is amended-- (1) in clause (v), by striking ``and" at the end; and (2) by adding at the end the following: ``(vii) steps to ensure that the components of the transition plan development process required under [[Page 124 STAT. 353]] section 475(5)(H) that relate to the health care needs of children aging out of foster care, including the requirements to include options for health insurance, information about a health care power of attorney, health care proxy, or other similar document recognized under State law, and to provide the child with the option to execute such a document, are met; and". (d) <<NOTE: 42 USC 622 note.>> Effective Date.--The amendments made by this section take effect on October 1, 2010.

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Relevant Federal Regulations

42 USC § 675(8)(B)(iv) (referred to above in amendment to G.L. c. 119, § 23(f)):

(iv) [*young adult*] who is—

- (I) completing secondary education or a program leading to an equivalent credential;
- (II) enrolled in an institution which provides post-secondary or vocational education;
- (III) participating in a program or activity designed to promote, or remove barriers to, employment;
- (IV) employed for at least 80 hours per month; or
- (V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

42 USC § 675(5)(H): (referred to above in amendment to G.L. c. 119, §§ 23(f), 29B(c)):

H) during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8)(B)(iii), whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under section 677 of this title, a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.