

## Massachusetts Foster Child Bill of Rights (proposed)

**Emergency Preamble:** Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith protect vulnerable children and families, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Said chapter 119 is hereby further amended by inserting after section 23C the following section:

Section 23D. (a) Children in foster care have certain rights and the Department shall promulgate a policy governing its obligations to inform foster children of their rights while in DCF care and/or custody and its responsibilities to foster children. This policy shall be collectively known as the foster child bill of rights and shall be provided to foster children by the Department and by private agencies contracted by the Department to provide foster care to all children in DCF care and/or custody. All current foster children including those in foster homes, congregate and residential placement through the Department, shall be provided with a copy of the foster child bill of rights and every child in DCF care and/or custody shall have their rights explained to them in an age appropriate manner by DCF and by any private agency contracted by DCF to provide foster/congregate/residential/substitute care. For children aged 12 years or older, DCF shall secure written acknowledgement from the child that the child was given a copy of the foster child bill of rights and had each right explained to them. Any child aggrieved by a violation of this section may motion the Court for appropriate relief and remedial orders. Sua sponte or upon a motion, the Court may issue any order conducive to the enforcement of rights of the child listed herein.

(b) The foster child bill of rights shall include, but not be limited to, the following:

- (1) The Department shall ensure that each child shall be treated with respect by DCF staff, foster parents, and service providers without harassment, retaliation, or discrimination on the basis of actual or perceived race, national origin, culture, language, ethnicity, sexual orientation, gender, gender identity, gender expression, religion and/or disability.
- (2) The Department shall ensure each child has a placement that is free from physical, sexual, psychological, emotional or other abuse or neglect, free from exploitation, and has access to adequate, healthy food, clothing, personal care products, and accessories which preserves and promotes the child's family's culture. The Department shall ensure that each child has a placement that provides appropriate language access and for the preservation and maintenance of all of the languages the child entered into care speaking.
- (3) The Department shall provide the child appropriate care and treatment in the least restrictive setting available that can meet the child's needs. The Department shall provide the child with a placement in a family-based foster home and in placement settings that provide a safe and nurturing environment while supporting permanency, and well being, including encouraging the youth's goals, interests, social and school activities. No child shall be placed, housed, or detained in a Department of Youth

Services (DYS) placement based on the Department's inability to provide an available and appropriate foster care placement. Nor shall the Department advocate for a bail of any amount to avoid placing a child in a Department foster placement.

- (4) The Department shall provide the child with a placement that will give the child the opportunity to know, understand, learn, and develop their positive racial, cultural, linguistic, gender, religious, and ethnic identity. The Department shall ensure that the child's placement maintains the connections necessary to preserve and promote the child's positive racial, cultural, linguistic, gender, religious, and ethnic identity.
- (5) The Department shall have DCF staff, foster parents, and service providers receive instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender children in out-of-home care. Such out-of-home placement shall be made according to the child's gender identity, regardless of the gender or sex listed in their court, child welfare, medical, or vital records. The child shall be referred to by the child's preferred name and gender pronoun, and to maintain privacy regarding sexual orientation and gender identity and expression, unless the child permits the information to be disclosed, or disclosure is required to protect their health and safety, or disclosure is compelled by law or a court order.
- (6) The Department shall ensure that all DCF staff, foster parents, and service providers receive instruction and training on the provision of reasonable accommodations (including services and supports) necessary for a child with a disability in their placement. The Department shall ensure that such out-of-home placement will be accessible to a child with a disability, and shall make reasonable accommodations as necessary. This shall include the provision of adaptive equipment or auxiliary aids. Primary consideration will be given to the auxiliary aid or service requested by the child with a disability. These accommodations will be provided in a timely manner and in such a way as to protect the privacy of the child with a disability.
- (7) Children with disabilities shall not be subjected to undue delay in the provision of Department services due to their disabilities. The Department shall ensure that all DCF staff, foster parents, and service providers make assessments of and decisions regarding the placement needs of children with disabilities based on facts of the individual child's needs, and not on assumptions or stereotypes about the child's disability.
- (8) The Department shall prioritize the child's family, relatives, and fictive kin (defined as who the child identifies as "family") first as potential placement providers.
- (9) The child shall be placed together with any siblings or half siblings also removed from the home unless the department makes a showing to the court by clear and convincing evidence that a joint-placement is contrary to the safety or well-being of any of the siblings. The Department shall ensure the child be placed in close proximity to siblings if unable to be in the same setting to facilitate frequent and meaningful contact and shall be afforded contact regardless of geographic barriers. If siblings are separated in care, they shall be informed of their rights under G.L. c. 119, sec. 26D to visit with siblings. The Department shall include the child in permanency planning decisions relative to siblings and shall notify the child of a sibling's change in placement, including discharge

from care and any other change in permanency including guardianship and/or adoption and the Department shall facilitate ongoing contact with the sibling as necessary.

- (10) The Department shall provide the child with information about a foster family or program prior to being placed and, whenever possible, shall have an opportunity to meet the foster parent or program staff before placement occurs. The child shall be informed of a placement change, and the reason(s) therefore, at least 5 days in advance absent an emergency and with as much notice as possible in the event of an emergency.
- (11) The Department shall ensure that each child in its care/custody shall have in-person parenting-time in a duration and frequency that is consistent with the developmental needs of the child and in natural settings whenever possible, as well as opportunities for other forms of parenting time including but not limited to phone calls, videoconferencing, email and texting. The child shall have the right to petition the court for a determination as to the duration and frequency of visitation and other contact if not satisfied with the Department's visitation plan.
- (12) The Department shall provide support from the social worker, foster family or provider to the child in maintaining positive contact with other family members (in addition to parents above), fictive kin, siblings, and significant positive relationships in their lives (relatives, teachers, friends, community supports, etc.) including assistance with contact information and visitation and should participate in the development of visitation plans. The child shall have the right to petition the court for a determination as to contact with these collaterals if not satisfied with the Department's visitation plan.
- (13) The Department shall ensure that the child be treated as a family member and, whenever possible, be included in a foster family's activities, holidays and rituals and be able to freely discuss reason(s) with the social worker and foster family if choosing to not participate.
- (14) The Department shall ensure the child has access to appropriate medical, reproductive, dental, vision, mental and behavioral health services regularly and more often as needed. The Department shall ensure that the child is not subject to overmedication and that the child understands each of the medications and its purposes and side effects in a developmentally appropriate way based on age.
- (15) The Department also shall ensure the child has access to school, educational stability, and to an education that fits the child's needs.
- (16) The Department shall ensure the child is able to participate in age-appropriate school, extracurricular, enrichment, religious, cultural, linguistic, ethnic, and social activities. The Department shall ensure that the reasonable and prudent parent standard is used in making determinations regarding participation in activities by any placement provider.
- (17) The Department shall ensure the child can achieve age-related milestones such as obtaining a driver's license, opening bank accounts, celebrating birthdays, graduations, etc.
- (18) The Department shall provide the child reasonable access to a caseworker who makes case plan decisions. Reasonable access shall include the social worker and supervisor's office telephone numbers and email addresses as well as, a minimum, monthly visits by the social worker. The Department shall also provide the child an

emergency contact number available 24 hours a day, 7 days a week. Such access must include the opportunity to have private conversations regarding any questions, grievances, or concerns.

- (19) The Department shall invite the child to participate in the development and review of the service plan and have input into changes to the plan that affect permanence, safety, stability or well being. Youth age 14 and older should also be presented with the action/service plan for their review and signature.
- (20) The Department shall inform the child in a manner appropriate to age and level of understanding of the reason(s) the Department of Children and Families became involved with the child's family and why he/she is in care. The Department shall provide reasonable efforts towards reunification to the child and the child's family of origin, pursuant to state and federal law.
- (21) The Department shall include the child in the Foster Care Review meeting, Permanency Hearing and Lead Agency Team meeting if age 14 and older, unless documented by court order that participation would be detrimental to the youth. If the youth is unable to attend in person or by phone/video, the child shall have the right to submit a written statement to be considered at the meeting.
- (22) The Department shall notify the child about court dates and ensure the child understands the child's right to attend court and speak to the judge regarding any decision that may have an impact on the child's life.
- (23) The Department shall provide the child (and their counsel during the course of representation) access to information contained in medical, dental, and educational records held by DCF as well as personal documents such as social security card, birth certificate, health insurance information, state ID/driver's license, green card, etc. When youth leave DCF, they shall be given copies of medical, dental and educational records held by DCF and an original social security card, birth certificate, health insurance card, state ID/driver's license, and green card.
- (24) The Department shall ensure the child is informed of the names and phone numbers of assigned attorneys and be aware that they can contact their attorneys and that there is a process to request a change of attorneys.
- (25) The Department shall ensure the child has access to personal possessions, personal space, and privacy with allowance for safety.
- (26) The Department shall inform the child that DCF provides clothing, birthday and holiday payments to foster parents and placement providers for youth in placement and that the child has the right to have those payments used to meet the child's needs.
- (27) The Department shall ensure the child receives notice of all available services, including adaptive equipment or auxiliary aids and supports, assistance in acquiring life skills, education, financial support, receive their credit report and assistance in resolving inaccuracies, training, and career guidance to accomplish personal goals and prepare for the future and be informed of the post-secondary educational and employment supports available to youth in care through the Department.