

**HOUSE . . . . . No. 00056**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Kay Khan***

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*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 passage of the accompanying bill:

An act relative to fair hearings in the department of children and families.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>George Ross</i>	<i>2nd Bristol</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>

# HOUSE . . . . . No. 00056

By Ms. Kay Khan of Newton, petition (accompanied by bill, House, No. 00056) of Sean Garballey and others relative to hearings in the department of children and families. Joint Committee on Children, Families and Persons with Disabilities.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An act relative to fair hearings in the department of children and families.

*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 18B of the General Laws, as appearing in the 2008 Official Edition, is hereby
- 2 amended by inserting after the word "assistance" on the last line of section 5, the following:-
- 3 "(a) There shall be within the department a division of hearings for the purpose of holding the
- 4 hearings referred to herein and rendering decisions. Said division shall be under the supervision
- 5 of a director appointed by the commissioner and shall be independent of all other divisions and
- 6 personnel of the department except as specifically set forth herein.
- 7 (b) Any person aggrieved by any decision of the department which is eligible for an
- 8 administrative hearing pursuant to the regulations of the department shall have a right to a
- 9 hearing, after due notice, upon appeal to the director. Any determination by the division of
- 10 hearings that there is no right to a hearing shall be provided to the appellant in writing and shall

11 include a statement of the reasons therefore. The appellant shall have a right to a fair hearing to  
12 determine whether the facts underlying that determination are accurate.

13 (c) A hearing held pursuant to this section shall be conducted by a hearing officer designated by  
14 the director and shall be held at the area office at which the decision was made or at another  
15 location that is equally or more convenient to the appealing party. The provisions of chapter  
16 30A, section 12 shall apply to all such hearings. The director shall be responsible for the fair  
17 and efficient operation of the division in conformity with state and federal laws and regulations  
18 and may review and discuss with the hearing officer proceedings held pursuant to this section  
19 solely in order to carry out this responsibility. No person outside of the hearings unit shall  
20 communicate about any pending case with any member of the hearings unit unless such  
21 communication is made in the presence of all parties or submitted in writing with copies to all  
22 parties. The director shall also be responsible for the training of hearing officers, scheduling of  
23 hearings and the maintenance of a docket/decision index which shall be available for public  
24 inspection.

25 (d) The hearing office shall schedule a fair hearing to be held within 90 days of receipt of a  
26 request for a fair hearing, and shall render decisions within 30 days from the close of the hearing  
27 record. Upon request for good cause shown, a showing that circumstances require a speedy  
28 resolution, the department may expedite the hearing so that it is held sooner than 90 days from  
29 the request. The hearing officer may extend the deadline for rendering a decision one time  
30 provided that good cause reasons for the delay are stated in a written decision to continue, but, in  
31 no event may a hearing officer render a fair hearing decision more than 150 days from the date of  
32 the fair hearing request. The decision of the department shall be subject to review in accordance  
33 with the provisions of chapter 30A.

34 (e) (i) The filing of a request for a fair hearing allowable under the regulations of the department  
35 regarding a decision to terminate or reduce services shall stay the effect of the challenged  
36 decision until after the fair hearing is held and the fair hearing decision is rendered.

37 (ii) The filing of a request for a fair hearing allowable under the regulations of the department  
38 within 10 days of the removal of a child from a foster home shall stay the removal of the child  
39 until after the fair hearing is held and decided. However, upon a written finding that the  
40 physical, mental or emotional safety of the child would be placed at risk if the child is not  
41 removed immediately, the removal may take place before the fair hearing, and the fair hearing  
42 shall be held and the decision rendered within 14 days of the removal.

43 (iii) Except as provided in paragraphs (e)(i) and (e)(ii) above, the filing of a request for a fair  
44 hearing shall not otherwise stay or affect the implementation of the challenged hearing decision.  
45 The decision shall be reversed if the fair hearing is not held within 90 days, or if the decision is  
46 not rendered within 150 days from the postmark date of the request. Upon a written finding that  
47 the physical, mental or emotional safety of a child would be placed at risk by reversing the  
48 challenged decision, the department shall have an additional 14 days to hold the fair hearing and  
49 render a decision.

50 (f) The hearing officer shall provide a copy of the written hearing decision to the appealing party  
51 and the Department. Within 20 days of the postmark date of mailing or of the date of in-hand  
52 delivery of the hearing officer's decision, an appealing party or a departmental representative  
53 may request that the commissioner reconsider the hearing officer's decision. The hearing  
54 officer's decision shall become final 30 days from issuance unless the appealing party is notified  
55 within that time period that the commissioner intends to reconsider the decision. The

56 commissioner shall render a decision within 60 days of giving notice of an intent to reconsider.  
57 If upon reconsideration the commissioner issues a decision which differs from the hearing  
58 officer's decision, the commissioner's decision must state the facts, law and policy supporting  
59 any such difference. The commissioner's reconsideration decision shall be the final decision of  
60 the Department, but the hearing officer's decision shall also be included in the record for judicial  
61 review. If the commissioner does not render a decision within 60 days from giving notice of an  
62 intent to reconsider, then the hearing officer's decision shall become the final decision of the  
63 department 60 days from the date of the commissioner's notice of an intent to reconsider."