HOUSE . . . . . No. 1409

By Mrs. Parente of Milford, petition of Marie J. Parente and other members of the General Court relative to the protection of families in care and protection decisions. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT RELATIVE TO FAMILY PRESERVATION AND RIGHTS OF FAMILIES IN CARE AND PROTECTION OF CHILDREN.

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 119 of the Massachusetts General Laws,
2 as appearing in the 1998 Official Edition, is hereby amended by
3 striking lines 1-8 in Section 1 and inserting therein the
4 following:—
5 It is hereby declared that there shall be a family policy estab-
6 lished in the commonwealth, that shall direct efforts, first, to the
7 strengthening and encouragement of family life for the protection
8 and care of children and with a primary goal of preserving the
9 unification of family members including children in the first
10 instance; to assist and encourage the use by any family of all
11 available resources to this end; and to provide substitute care of
12 children only when the family itself or the resources of the family
13 and/or of the department that are available to the family are
14 unable to provide the necessary care and protection to insure the
15 rights of any child to sound health and normal physical, mental,
16 spiritual and moral development.

1 SECTION 2. Chapter 51B of chapter 119 of the Mass. General
2 Laws is hereby amended by adding in subsection (1), after the
3 words, "facts or matters", the following:—
4 The department shall conduct a needs assessment on family
5 members residing in the household, including children who are
6 the subject of the report and provide a written service plan to the

family. Services shall be activated immediately, if feasible, or within 10 days of the initial contact by the department, if such services are warranted and found to be essential to the family's stability, unity and preservation. The department shall ensure that all parties to the service or treatment plan are in full understanding of the goals, terms, services stated in the plan. The department shall ensure that no child is removed from his or her home or maintained in substitute care, nor shall parental rights be terminated solely for the reasons that appropriate or relevant resources or services are not available to be provided to the family by the department, or that the goals of the service or treatment plan are unmet despite good faith efforts by the family to meet said goals. When appropriate, the department shall refer the family to resources and services available through other state agencies.

SECTION 3. Chapter 119, section 51B is hereby amended by adding at the end of Subsection (3), the following:—

Whenever feasible and appropriate, the department shall, in the event of the need for placement in substitute care for the child or children, incorporate in the child or family's service plan, the classification of the child as needing temporary or short-term placement, long-term placement, or pre-adoptive placement, and the reasons for such placement, and shall strive to achieve the goals of family reunification if such is the determination, by providing the requisite resources, services and programs that are available to meet the goals of placement in substitute care and/or family reunification.

SECTION 4. Chapter 3 of the Acts of 1999 shall be amended by adding in section 12, after subsection (4), the following subsection:—

(5) the permanency hearing shall include a review of the particulars of the written service plan provided by the department of social services, including but not limited to a determination that services are meeting the needs of the family and children therein and/or the child in placement, or are deficient; progress reports on meeting goals and terms of the service plan and revisions in the service plan, if necessary; the appropriateness and adequacy of the

11 service plan to enable the family and children to meet stated
12 goals, to attain reunification in the first instance if that is the goal,
13 or to move toward permanency planning for children in foster care
14 or adoptive care; the family's ability to access services included in
15 the plan; whether or not the plan continues to address the original
16 reasons for removal of the child from his or her home, or reunifi-
17 cation of the family; whether or not conditions and problem areas
18 have been ameliorated or eliminated and the reasons therein; a
19 review of whether or not removal of the child from his or her
20 home and placement in care was justified and appropriate, in com-
21 pliance with law and regulations.

1 SECTION 5. Section 29B of chapter 119 is hereby amended by
2 adding, after the second paragraph, the following:—
3 Prior to any and all hearings convened by the court of compe-
4 tent jurisdiction to determine permanency planning for a child, the
5 department shall submit to the court a written plan for the child
6 which shall be prepared according to uniform standards and
7 guidelines developed by the department. Such plan shall include
8 information upon which the court may determine whether the
9 department made reasonable efforts prior to the placement of the
10 child in foster care, or in a pre-adoptive or adoptive placement, to
11 prevent or eliminate the need for removal of the child from his or
12 her home and whether reasonable efforts were made subsequent to
13 removal, to make it possible for the child to be reunited with his or
14 her family in order to preserve the family. For the purposes of this
15 section, "reasonable efforts" shall include but not be limited to:
16 1. consultation and cooperation with parents in developing a
17 specific casework or treatment plan for appropriate, accessible
18 and relevant services or programs for the child and family; a
19 review of the original reasons for removal of the child from his or
20 her home and the justification and appropriateness of the decision;
21 2. the provisions of supportive and rehabilitative services and
22 other assistance to a child and his or her family, including but not
23 limited to, individual or group counseling, referral to local self-
24 help parenting groups, housing services and access to health care,
25 homemaker or parent aide services, respite care, intensive home-
26 based services, daily care, or child care or parent skills training;
27 3. when a child is in substitute care, making suitable arrange-
28 ments for the parents to visit the child and informing the parents

at appropriate intervals of the child's progress, development and health.

4. a review of the appropriateness, adequacy, and accessibility of services stated in the written treatment or service plan and the family's progress in meeting stated goals; a review of the family's ability and capacity to respond and progress towards meeting stated goals and the reasons therein; a review of the service or treatment plan and revisions of the plan is such is warranted after the review; the family shall participate in all aspects of the development and implementation of the service or treatment plan, including any revisions or ongoing evaluations necessary to enable the family to progress towards stated goals; the review shall include an assessment of the understanding of all parties as to the terms, services, and goals stated in the plan.

When the department's first contact with the family occurs during an emergency in which no preventive services could ensure the safety of the child or children, the department shall be deemed to have made reasonable efforts to prevent the need for removal of the child and placement in care. The department shall have the burden of proving reasonable efforts.

SECTION 6. Chapter 119 of the Mass. General Laws is hereby amended by adding, at the end of section 51A, the following:—

The department shall not accept anonymous reports of abuse or neglect under this section and shall be directed that such acceptances are in direct violation of the provisions of this section. Upon receipt of anonymous reports, the department shall encourage the person to identify him- or herself and comply with the provisions of this section, and shall provide the informant with assurances that all reports and the identity of the reporter is confidential.

SECTION 7. Chapter 119 of the Mass. General Laws is hereby amended by adding, at the end of section 51B(1), the following:—

At the time of the home visit and/or subsequent removal of the child or children from the home, if such decision is warranted and founded, the department shall provide the parents with a written notice of their rights or redress, including but not limited to:— the right to counsel and how to obtain counsel; the appeals and

8 hearing procedures involved and their rights therein; the right to
9 review records and statements made concerning the family and
10 their right to make corrective or remedial responses; rights
11 regarding service and treatment plans; the right to know which
12 collaterals will be contacted for information on the family or chil-
13 dren, including teachers, psychologists, physicians, or others
14 known to the family, and similar rights afforded to others.

1 SECTION 8. Chapter 119 of the Mass. General Laws is hereby
2 amended by adding, at the end of section 23A, the following para-
3 graph:—
4 Within 30 days of any action by the department of social serv-
5 ices regarding the placement of the child or children, an eviden-
6 tiary hearing shall be scheduled in the court, in order to determine
7 evidence substantiating any and all decisions of the department,
8 including compliance with rules, regulations and statutory man-
9 dates of the department. Parents, relatives or guardians with
10 whom the child resides or formerly resided shall be present at the
11 hearing and shall be allowed to provide contrary or supporting
12 information and shall be allowed to refute decisions and actions of
13 the department and to review records provided by the department.
14 The hearing matters shall include a review of the service or treat-
15 ment plan and a determination that rules, regulations and statutory
16 mandates of the department are in compliance.

1 SECTION 9. Chapter 119 of the Mass. General Laws shall be
2 amended by adding, at the end of section 51B(2), the following:—
3 No child shall be removed from his or her family due solely to
4 parenting practices used with children by the parent(s), nor for
5 conditions associated with or resulting from, poverty and eco-
6 nomic deprivation, nor for conditions of a health or medical
7 nature unless there is reasonable cause to believe that abuse or
8 neglect as defined in this chapter exists as a result of the parenting
9 practices or the conditions of poverty or economic deprivation or
10 health or medical conditions, or abuse or neglect are evident. If
11 conditions of poverty or conditions associated with health or med-
12 ical problems exist within the household, the department shall
13 make every effort available to refer the family to the appropriate
14 agency or service provider for services.

15 No child shall be removed from his or her home due solely to
16 abuse or neglect inflicted by another parent or member of the
17 household, or by a person who is not residing in the household,
18 unless the non-abusive parent or relative or guardian is not able to
19 protect the child from further abuse or neglect. Parents may vol-
20 untarily seek services from the department, including temporary
21 placement of the child or children.

1 SECTION 10. Chapter 119, section 29B as most recently
2 amended by chapter 3 of the acts of 1999, is hereby amended by
3 adding at the end, the following:—
4 The court shall ensure that no child is removed from his or her
5 home or is maintained in substitute care, nor shall parental rights
6 be terminated solely for the reasons that appropriate or relevant
7 resources or services are not available to be provided to the family
8 by the department, nor for conditions of poverty and economic
9 deprivation, nor for conditions of a health or medical nature
10 unless there is evidence or reasonable cause to believe that abuse
11 or neglect exists as a result of the conditions of poverty or eco-
12 nomic deprivation or health or medical conditions, or that abuse
13 or neglect are evident.

1 SECTION 11. Chapter 119 of the Mass. General Laws is hereby
2 amended by adding, at the end of section 24, the following:—
3 The Department of Social Services or any service provider
4 agency contracted by the department to provide services, shall
5 provide copies of all records pertaining to a specific case to legal
6 counsel for the parties involved in the case at least 45 days prior
7 to any scheduled hearing or trial pertaining to the case. Further,
8 any pertinent information or subsequently acquired information
9 shall be provided to legal counsel as it becomes available to the
10 department.

1 SECTION 12. The Executive Office of Health and Human
2 Services is hereby directed to conduct a review of all private
3 provider agencies contracted by the department of social services
4 for the purposes of providing services and programs to clients of
5 the department. Said review shall include the quality and quantity
6 of services provided to the department's clients, cost effectiveness

7 of contracted services, the effectiveness of contracted services,
8 financial accountability and quality control assurances, the level
9 and quality of services contracted, administrative costs of each
10 agency contracted to provide services and the actual funding
11 amounts that are directly provided to clients through services and
12 programs, the progress made of clients who receive said services
13 through contracted agencies, the relevancy and adequacy of pro-
14 grams and services to clients and families served by the depart-
15 ment. The review shall include recommendations by EOHHS to
16 improve accountability and oversight of private provider agencies
17 by EOHHS and the department of social services.