



COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE BOSTON 02133-1053

July 24, 2019

The Honorable Claire Cronin
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

The Honorable James Eldridge
Joint Committee on the Judiciary
State House, Room 320
Boston, MA 0213

Dear Chair Cronin and Chair Eldridge,

We are writing respectfully to request a favorable report on H.3445, *An Act relative to caregiver authorization affidavits*.

Massachusetts law currently allows parents who anticipate they will be unable to make decisions related to their children's daily needs to appoint a "temporary caregiver" via the Caregiver Authorization Affidavit (MGL ch. 201F). These affidavits are similar to a power of attorney in that they require no court approval, but different in that they are effective for a maximum of two years from the time they are signed and delegate only specified decision-making powers related to health care and education. The affidavits do not confer custody and can be changed or revoked at any time by the minor's parent or legal guardian. They have proven to be a helpful tool for parents who, for example, expect to be abroad for a period of time, have scheduled intensive medical care, or have been called to active duty.

Unfortunately, not all absences are anticipated and too often, unexpected situations catch families unprepared. If no caregiver has been authorized and the child enters the custody of the Department of Children and Families (DCF) by way of a section 51A report, DCF has an obligation to run CORI checks and visit the homes of all potential caregivers, including family and friends willing to take the child. This process can be lengthy, during which time the child remains in DCF custody, and may ultimately result in a placement that is different from the parent's wishes, and less suited to promoting the best interests of the child.

Recently, Massachusetts has seen a 20% increase in children entering into foster care. Many of these cases involve the children of single mothers who are incarcerated (the number of incarcerated women is also on the rise) or children whose parents enter voluntary or involuntary treatment for substance use disorder. Thousands more children may end up in DCF custody if Temporary Protected Status (TPS) expires in early 2020¹ for 12,000 individuals in Massachusetts

¹ TPS is set to expire on 1/2/2020 for those admitted from Sudan, Nicaragua, Haiti, and El Salvador; 1/5/2020 from Honduras; and 3/24/2020 from Nepal.

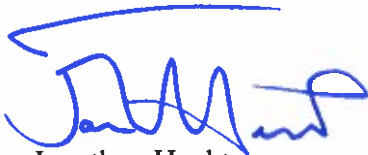
with more than 5,000 U.S.-born children. If those families are not able to adequately prepare, children of detained or deported parents will be left behind at home, at school or at police stations. The state does not have the administrative resources or enough foster families, interpreters or social workers to provide stability and emotional support to such a large number of children whose lives may be upended.

Instead of being placed by the state with strangers, children should ideally be cared for by close relatives or friends and the handoff should occur with as little delay and administrative complexity as possible. H.3445 proposes a number of changes to current law on Caregiver Authorization Affidavits to make it more likely that children of parents called to active military service, hospitalized, incarcerated, detained, or otherwise forced to be absent for some period of time will experience a smooth and less traumatic transition to new temporary caregivers.

H.3445 would modify current law to allow a parent or legal guardian to select a “springing” option to make a Caregiver Authorization Affidavit effective when the parent or legal guardian becomes unavailable rather than at the time it is signed. This would avoid the possibility that an affidavit may have already lapsed at precisely the time it becomes needed. The bill would also allow the designation of an “Alternate Caregiver” in case the designated caregiver is unavailable or unable to provide care at the time the affidavit springs into effect. In addition, H.3445 would update and clarify the scope of caregivers’ powers by specifying that they can make decisions regarding daycare and a range of recreation and enrichment activities.

By strengthening this existing tool, Massachusetts can help ensure stability and continuity of care for children of families in many different types of emergency and non-emergency situations. Thank you for your Committee’s consideration of this important legislation. Please feel free to be in touch with any questions or concerns you may have.

Best regards,



Jonathan Hecht
State Representative
29th Middlesex



Denise Provost
State Representative
27th Middlesex