SENATE . . . . . No. 2257

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Thursday, April 28, 2016

The committee on Ways and Means, to whom was referred the Senate Bill to keep siblings together (Senate, No. 104),-- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act supporting the rights of children in the custody of the Department of Children and Families" (Senate, No. 2257).

For the committee,
Karen E. Spilka

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An Act supporting the rights of children in the custody of 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:

SECTION 1. Subsection (c) of section 23 of chapter 119 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following 2 paragraphs:-

The department shall seek to identify any minor sibling or half-sibling of the child. The department and the court shall ensure that siblings removed from their home and placed in the department's care, custody or responsibility are placed in the same foster care, kinship guardianship or adoptive placement with all siblings and half-siblings 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; provided further, that the court shall make written findings in support of its decision to deny the joint placement. In the case of siblings removed from their home who are not jointly placed, the department shall provide for frequent visitation or other ongoing interaction between the siblings, unless the department makes a showing to the court by clear and convincing evidence that frequent visitation or other ongoing

14 interaction is contrary to the safety or well-being of any of the siblings; provided further, that the
15 court shall make written findings in support of its decision to deny the frequent visitation or other
16 ongoing interaction. Notwithstanding any provision of this section, the department may separate
17 a child from siblings or half-siblings to avoid immediate risk of harm to any child; provided,
18 however, that if the department does separate a child from a sibling or half-sibling without prior
19 court approval, it shall file a petition for court approval of the placement decision within 1
20 business day after the placement and provide notice to all counsel in any proceeding held
21 pursuant to this chapter. The court shall hold a hearing regarding the placement change within 7
22 days of filing of the petition. The department shall bear the burden of showing by clear and
23 convincing evidence at the hearing that the best interests of 1 or more of the siblings requires a
24 separate placement. Any child who is placed apart from a sibling or half-sibling, even if placed
25 with other siblings or half-siblings, may ask the court to review its decision authorizing a
26 separate placement. The department shall bear the burden of showing by clear and convincing
27 evidence that it is in the best interest of at least 1 sibling to continue in a separate placement.

28 If the court authorizes the department to place siblings or half-siblings in separate
29 placements, the department shall make ongoing efforts to remedy any concerns found by the
30 department that led to the separate placements. The department shall document its efforts in the
31 case plan. Notwithstanding the definition of "custody" in section 21 , the court may make any
32 order to ensure the joint placement of siblings or half-siblings as may be in the children's best
33 interests.

34 SECTION 2. Section 3 of chapter 210 of the General Laws, as so appearing, is hereby
35 amended by adding the following subsection:-

36 (e) For the purposes of this subsection, the term "child" shall include a young adult as
37 defined in section 21 of chapter 119. If at least 2 years have passed since the court entered an
38 order terminating parental rights pursuant to this chapter or chapter 119, a child whose parents
39 were the subject of that order may file a motion requesting that the court vacate the order with
40 respect to 1 or both of the child's former parents, but only if all of the following apply:

41 (i) the child is at least 12 years of age;

42 (ii) the court has determined after a hearing held pursuant to section 29B of
43 chapter 119 that adoption is no longer the permanency plan for the child; and

44 (iii) either the child has not been adopted or, if the child has been adopted, a court
45 has entered an order terminating the parental rights of the child's adoptive parents or the
46 adoptive parents have voluntarily surrendered their parental rights.

47 The child shall sign the motion in absence of a showing of good cause as to why the child
48 is unable to sign the motion. The court shall order that an evidentiary hearing be held and
49 provide notice, in the manner prescribed for a petition filed pursuant to section 24 of chapter 119,
50 of the hearing to the child's former parents. Neither parent shall be considered a party for the
51 purpose of the motion, nor shall either have an independent right to be heard, though a parent's
52 testimony may be offered into evidence if the parent is called as a witness by a party. The court
53 shall grant the motion if it determines by a preponderance of the evidence that vacating the order
54 terminating parental rights is in the child's best interests. The court shall specify in writing the
55 factual basis for its determination. As soon as practicable after granting the motion, the court
56 shall enter an order pursuant to subsection (b) of section 26 of chapter 119, provided that the
57 order is in the best interests of the child.