

SENATE No. 75

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer L. Flanagan

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 adoption of the accompanying bill:

An Act relative to the re-homing of children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>

SENATE No. 75

By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 75) of Jennifer L. Flanagan, Kenneth J. Donnelly, Marjorie C. Decker, Steven S. Howitt and other members of the General Court for legislation relative to the re-homing of children. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act relative to the re-homing 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. Section 6 of chapter 15D of the General Laws is hereby amended by adding
2 at the end thereof the following paragraphs:-

3 (f) A placement agency shall provide pre-adoptive parents with all relevant information
4 about a child to enable the pre-adoptive parent to knowledgeably determine whether to accept the
5 child for adoption. Relevant information shall include but not be limited to all mental, emotional,
6 behavioral, or physical health issues of the child.

7 (g) A placement agency shall make available, either directly or by referral, post-adoption
8 services to adoptive parents and adopted children to avoid disruption or dissolution of the
9 adoption. Such services shall include but not be limited to: factual information pertaining to any
10 adoption services provided at the placement agency; counseling concerning adoption related
11 issues such as identity, roles and relationships; counseling and other services which support

12 placements; assistance in joining or developing support groups; information regarding health
13 care coverage for the child through the state; and general information regarding current adoption
14 issues, practices and laws. If such services are being offered by referral, the placement agency
15 must provide a list of agencies who provide such services to adoptive parents.

16 (h) When any adoption disrupts, the adoptive parent shall be required to contact the
17 placement agency that facilitated the adoption if the adoptive parents(s) can no longer adequately
18 care for the child.

19 (i) The Department of Early Education and Care shall create a uniform orientation
20 curriculum for foster and adoptive parent applicants. All placement agencies shall provide this
21 orientation for foster and adoptive parent applicants in which all foster and adoptive parent
22 applicants must participate. The curriculum shall include a minimum number of hours to be
23 completed as part of the orientation and shall include, at minimum, specific information for
24 foster and adoptive parent applicants seeking to foster or adopt international children.

25 (j) For purposes of this section, disruption shall refer to an adoption process that ends
26 after the child is placed in an adoptive home and before the adoption is legally finalized.
27 Dissolution shall refer to an adoption in which the legal relationship between the adoptive
28 parents and adoptive child is severed, either voluntarily or involuntarily, after the adoption is
29 legally finalized.

30 SECTION 2. Article V of chapter 190B of the General Laws is hereby amended by
31 striking out Section 5-103 and inserting in place thereof the following:-

32 (a) A parent or parents of a minor, other than a parent or parents whose parental rights
33 have been terminated or a parent who has signed a voluntary surrender, or a guardian or

34 guardians of a minor or incapacitated person may appoint a temporary agent for a period not
35 exceeding 60 days, and may delegate to such agent any power that the parent or guardian has
36 regarding the care, custody, or property of the minor child, ward or incapacitated person, except
37 the power to consent to marriage or adoption of a minor; provided, however, that no parent or
38 guardian shall appoint a temporary agent when a court has ordered that the minor child be placed
39 in the custody of a person other than the parent or guardian.

40 (b) Any delegation under this section, regardless of the time period of delegation, shall be
41 by a writing signed by, or at the direction of, the parent(s) or guardian(s) and attested by at least
42 2 witnesses 18 years of age or older, neither of whom is the temporary agent together with the
43 written acceptance of the temporary agent.

44 (c) A parent or guardian may not appoint a temporary agent of a minor if the minor has
45 another living parent whose whereabouts are known and who is willing and able to provide care
46 and custody for the minor unless the nonappointing parent consents to the appointment in
47 writing. A parent may not appoint a temporary agent if the appointing parent's parental rights
48 have been terminated or a parent who has signed a voluntary surrender.

49 (d) Any delegation under this section may be revoked or amended by the appointing
50 parent(s) or guardian(s) and delivered to all interested persons. The authority of the temporary
51 agent may be limited or altered by the court.

52 (e) A delegation under this section shall not exceed a period of 60 days regarding the care
53 and custody of a minor child unless the delegation is approved by the court. A parent who has, in
54 accordance with this section, appointed a temporary agent for the care and custody of a minor
55 child, and wishes for the appointment to exceed 60 days, shall file a petition with the court

56 requesting the court’s approval of such delegation. The petitioner shall attach a copy of the
57 writing required by paragraph (b) and shall state in the petition all of the following:

58 (1) The name, address, and date of birth of the child who is the subject of the delegation
59 of powers.

60 (2) The names and addresses of the parents of the child.

61 (3) The name and address of the person nominated as agent and the relationship of the
62 agent to the child.

63 (4) Whether the parent wishes to delegate to the agent full parental power regarding the
64 care and custody of the child or partial parental power regarding the care and custody of the child
65 and, if the parent wishes to delegate partial parental power, the specific powers that the parent
66 wishes to delegate and any limitations on those powers.

67 (5) The proposed term of the delegation of powers, the reasons for the delegation of
68 powers, and whether the parent proposes to provide any support to the agent during that term. If
69 so, the petition shall indicate the amount of that support.

70 (6) Facts and circumstances showing that the delegation of powers would be in the best
71 interest of the child and that the person nominated as agent is fit, willing and able to exercise
72 those powers.

73 (f) The court shall hold a hearing on a petition filed under paragraph (e) within 45 days
74 after the filing of the petition. The petitioner shall cause the petition and notice of the time and
75 place of the hearing to be served at least 10 days before the time of the hearing on the child, if 12
76 years of age or older; the child’s guardian ad litem and counsel, if any; the parents of the child;

77 the person nominated as agent; any guardian, legal custodian, and physical custodian of the
78 child; any organization that is facilitating the delegation of power. Notice shall be served in
79 person or by first class mail. Notice is considered to be given by proof of personal service, by
80 proof that the notice was mailed to the last-known address of the recipient, or, if the recipient is
81 an adult, by the written admission of service of the person served.

82 (g) At the hearing, the court shall first determine whether any party wishes to contest the
83 petition. If the petition is not contested, the court shall immediately proceed to a fact-finding and
84 dispositional hearing, unless an adjournment is requested. If the petition is contested or if an
85 adjournment is requested, the court shall set a date for a fact-finding and dispositional hearing
86 that allows reasonable time for the parties to prepare but is no more than 30 days after the initial
87 hearing. At the fact-finding and dispositional hearing, any party may present evidence and
88 argument relating to the allegations in the petition.

89 (h) In determining the appropriate disposition of a petition filed under (e), the best
90 interests of the child shall be the prevailing factor to be considered by the court. The court shall
91 also consider whether the person nominated as agent would be fit, willing, and able to exercise
92 the powers to be delegated, the reasons for the delegation of powers, and the amount of support
93 that the parent is willing and able to provide to the agent during the term of the delegation of
94 powers.

95 (i) At the conclusion of the fact-finding and dispositional hearing, the court shall grant
96 one of the following dispositions, unless the court adjourns the hearing paragraph (j):

97 (1) A disposition dismissing the petition if the court finds that the petitioner has not
98 proved the allegations in the petition by clear and convincing evidence or determines that
99 approval of the proposed delegation of powers is not in the best interest of the child; or

100 (2) A disposition approving the proposed delegation of powers, if the court finds that the
101 petition has proved the allegations in the petition by clear and convincing evidence and
102 determines that the proposed delegation of powers is in the best interest of the child. The
103 disposition may also designate an amount of support to be paid by the child's parent to the agent.
104 If the court approves the proposed delegation of powers, the parent and the person nominated as
105 agent may execute a power of attorney delegating those powers as approved by the court.

106 (j) If at the conclusion of the fact-finding and dispositional hearing the court finds that the
107 petitioner has proved the allegations in the petition by clear and convincing evidence, but that the
108 person nominated as agent is not fit, willing, and able to serve as agent or that appointment of
109 that person as agent would not be in the best interest of the child, the court may, in lieu of
110 granting a disposition dismissing the petition under paragraph (i) adjourn the hearing for not
111 more than 30 days and request the petitioner or any other party to nominate a different person as
112 agent.

113 (k) Any person who delegates his or her powers regarding care and custody of a child for
114 longer than 60 days without first obtaining the approval of the court as provided in this section is
115 subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

116 SECTION 3. Chapter 210 of the General Laws is hereby amended by striking out section
117 11A and inserting in place thereof the following section:-

118 a) As used in this section, the term published shall include but not be limited to, any
119 computerized communication system including by electronic mail, Internet site, Internet profile,
120 or any similar medium of communication provided via the Internet.

121 b) Any person or entity other than a duly authorized agent or employee of the department
122 of children and families or a child care or placement agency listed under the provisions of
123 chapter 15D, who causes to be published in the commonwealth, an advertisement or notice of
124 children offered or wanted for adoption or any other permanent physical placement, or in any
125 way offers to place, locate or dispose of children offered or wanted for adoption or any other
126 permanent physical placement, or who holds himself out in any way as being able to place,
127 locate or dispose of children for adoption or any other permanent physical placement shall be
128 punished by a fine of not less than five thousand nor more than twenty five thousand dollars.
129 Any such person who shall accept payment in the form of money or other consideration in return
130 for placing a child for adoption or any other permanent physical placement shall be punished by
131 a fine of not less than five thousand and no more than thirty thousand dollars, or by
132 imprisonment in jail or house of correction for not more than two and one-half years or in the
133 state prison for not more than five years, or both.

134 c) Whoever receives a child to be adopted or placed in any other permanent physical
135 placement, in violation of this section, shall be punished by a fine of not less than ten thousand
136 and no more than forty thousand dollars, or by imprisonment in jail or house of correction for not
137 more than two and one-half years or in the state prison for not more than five years, or both.

138 d) A parent or legal guardian who causes a child to be adopted or placed in any other
139 permanent physical placement, in violation of this section, shall be punished by imprisonment in

140 the state prison for not less than 5 years nor more than 20 years and by a fine of not more than
141 \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any
142 person convicted under this section be eligible for probation, parole, work release or furlough or
143 receive any deduction from his sentence for good conduct until he has served 5 years of such
144 sentence.