

HOUSE No. 1509

The Commonwealth of Massachusetts

PRESENTED BY:

Joan Meschino

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 definition of custody in protection and care of children proceedings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>1/15/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/30/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>

HOUSE No. 1509

By Ms. Meschino of Hull, a petition (accompanied by bill, House, No. 1509) of Joan Meschino and others relative to the definition of custody in care and protection of children proceedings. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3105 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the definition of custody in protection and care of children proceedings.

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 21 of chapter 119 of the General Laws, as most recently amended
2 by Chapter 240 of the Acts of 2012, is hereby further amended by striking out paragraph 9 and
3 inserting in place thereof following new paragraph:-

4 “Custody”, the power to: (1) determine a child's place of abode, medical care and
5 education; (2) control visits to a child; and (3) consent to enlistments, marriages and other
6 contracts otherwise requiring parental consent. If a child, parent or guardian objects to the
7 carrying out of any power conferred by this paragraph, that child, parent or guardian may take
8 application to the committing court, and the court shall take evidence and make a de novo
9 determination and order on the matter. The court may also make any such determination or order
10 sua sponte. If the court determines it to be in the child’s best interests, the court may order the

department to move a child or place a child in a specific foster home, residential program, or other placement and may order the guardian or custodian of a child, including the department, to provide visits and other contact under the conditions, with the frequency, and of a duration specified by the court, between the child and the child's sibling, half-sibling, parent, guardian, custodian or other person.

SECTION 2. Section 23 of said chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by deleting paragraph (a)(3) and inserting in place thereof the following:-

(a) (3) If a child is without proper guardianship due to death, unavailability, incapacity or unfitness of a parent or guardian or with the consent of a parent or parents, the department may seek, and shall accept, an order of the probate court granting responsibility for the child to the department. Such responsibility shall include the right to: (i) determine the child's abode, medical care and education; (ii) control visits to the child; (iii) consent to enlistments, marriages and other contracts requiring parental consent; and (iv) consent to adoption only when it is expressly included in an order of the court. If a child, parent or guardian objects to the carrying out of any power conferred by this paragraph, that child, parent or guardian may take application to the committing court, and the court shall take evidence and make a de novo determination and order on the matter. The court may also make any such determination or order sua sponte. If the court determines it to be in the child's best interests, the court may order the department to move a child or place a child in a specific foster home, residential program, or other placement and may order the guardian or custodian of a child, including the department, to provide visits and other contact under the conditions, with the frequency, and of a duration specified by the court, between the child and the child's sibling, half-sibling, parent, guardian, custodian or other

34 person. In making any order under this clause, the probate court shall consider section 29C and
35 shall make the written certification and determinations required by said section 29C. If a child is
36 in the care of the department of mental health or the department of developmental services, the
37 responsibility for the child as described in this section and all rights therein contained shall
38 continue in the department. If a person with mental retardation who has been declared mentally
39 incompetent was the responsibility of the department prior to reaching the age of 18, the
40 department shall continue to exercise responsibility for that person until that person is declared to
41 be no longer legally incompetent.