

HOUSE No. 1679

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 improving legal and administrative proceedings for court-involved children and families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>1/18/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/19/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/23/2023</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>6/6/2023</i>

HOUSE No. 1679

By Representative Meschino of Hull, a petition (accompanied by bill, House, No. 1679) of Joan Meschino, Lindsay N. Sabadosa and Natalie M. Higgins relative to improving legal and administrative proceedings for court-involved children and families. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act improving legal and administrative proceedings for court-involved 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:

1 SECTION 1. Section 21 of chapter 119 of the General Laws is hereby amended by
2 striking out paragraph 9 and inserting in place thereof following new paragraph:-
3 “Custody”, the power to: (1) determine a child's place of abode, medical care and
4 education; (2) control visits to a child; and (3) consent to enlistments, marriages and other
5 contracts otherwise requiring parental consent. If a child, parent or guardian objects to the
6 carrying out of any power conferred by this paragraph, that child, parent or guardian may take
7 application to the committing court, and the court shall take evidence and make a de novo
8 determination and order on the matter. The court may also make any such determination or order
9 sua sponte. If the court determines it to be in the child’s best interests, the court may order the
10 department to move a child or place a child in a specific foster home, residential program, or
11 other placement and may order the guardian or custodian of a child, including the department, to
12 provide visits and other contact under the conditions, with the frequency, and of a duration

13 specified by the court, between the child and the child's sibling, half-sibling, parent, guardian,
14 custodian or other person.

15 SECTION 2. Section 21A of chapter 119 of the General Laws is hereby amended by
16 striking out said section and inserting in place thereof the following:-

17 Section 21A. Evidence in proceedings under sections 21 to 51H, inclusive, shall be
18 admissible according to the rules of the common law and the General Laws. The court may
19 appoint a neutral investigator to investigate facts relating to the welfare of the child. The
20 investigator may, at the court's direction, file with the court a full report, under oath, of all facts
21 obtained as a result of the investigation. The report shall be admissible in evidence if offered by a
22 party or, upon 30 days' notice to all parties, by the court. The investigator may be called as a
23 witness by any party for examination as to the statements made in the report. The examination
24 shall be conducted as though it were on cross-examination. Reports written by parties or their
25 experts shall not be admissible in proceedings under section 21 to 51H, inclusive, unless such
26 reports are otherwise required to be prepared under the General Laws. Evidence may include
27 testimony of foster parents or pre-adoptive parents concerning the welfare of a child if such child
28 has been in the care of the foster or pre-adoptive parents for six months or more, and may
29 include the testimony of the child if the court determines that the child is competent and willing,
30 after consultation with appointed counsel, to testify.

31 SECTION 3. Section 23 of chapter 119 of the General Laws is hereby amended by
32 deleting paragraph (a)(3) and inserting in place thereof the following:-

33 (a) (3) If a child is without proper guardianship due to death, unavailability, incapacity or
34 unfitness of a parent or guardian or with the consent of a parent or parents, the department may

35 seek, and shall accept, an order of the probate court granting responsibility for the child to the
36 department. Such responsibility shall include the right to: (i) determine the child's abode,
37 medical care and education; (ii) control visits to the child; (iii) consent to enlistments, marriages
38 and other contracts requiring parental consent; and (iv) consent to adoption only when it is
39 expressly included in an order of the court. If a child, parent or guardian objects to the carrying
40 out of any power conferred by this paragraph, that child, parent or guardian may take application
41 to the committing court, and the court shall take evidence and make a de novo determination and
42 order on the matter. The court may also make any such determination or order sua sponte. If the
43 court determines it to be in the child's best interests, the court may order the department to move
44 a child or place a child in a specific foster home, residential program, or other placement and
45 may order the guardian or custodian of a child, including the department, to provide visits and
46 other contact under the conditions, with the frequency, and of a duration specified by the court,
47 between the child and the child's sibling, half-sibling, parent, guardian, custodian or other
48 person. In making any order under this clause, the probate court shall consider section 29C and
49 shall make the written certification and determinations required by said section 29C. If a child is
50 in the care of the department of mental health or the department of developmental services, the
51 responsibility for the child as described in this section and all rights therein contained shall
52 continue in the department. If a person with mental retardation who has been declared mentally
53 incompetent was the responsibility of the department prior to reaching the age of 18, the
54 department shall continue to exercise responsibility for that person until that person is declared to
55 be no longer legally incompetent.

56 SECTION 4. Section 24 of chapter 119 of the General Laws is hereby amended by
57 striking out, in line 38, the words “subclause (ii)” and inserting in place thereof the following
58 words:-

59 subclause (i).

60 SECTION 5. Section 24 of chapter 119 of the General Laws is hereby amended by
61 striking out paragraph 5.

62 SECTION 6. Chapter 119 of the General Laws is hereby amended by inserting, after
63 section 25, the following new section:-

64 Section 25A. (1) Any time after granting temporary custody of a child to the department,
65 the court may review and revise that order sua sponte to allow for the child to be placed in the
66 custody of a parent, guardian, custodian, or a suitable third party.

67 (2) No sooner than 60 days after the filing of the care and protection petition under
68 section 24, any parent or child may file a motion requesting a hearing under subsection (1). If the
69 parent or child alleges that there has been a material change in circumstances, the court shall take
70 evidence on the issue to determine whether a modification of the order is warranted.

71 (3) If a parent or a child waived the right to a temporary custody hearing or the right to a
72 hearing as to who should be the custodian of the child under section 24, the court, upon request
73 of the parent or child, shall afford the parent or child a hearing under subsection (1), regardless
74 of whether there has been a change of circumstances and regardless of how soon the request was
75 made after the filing of the care and protection petition.

76 SECTION 7. Section 26 (a) of chapter 119 of the General Laws is hereby amended by
77 inserting after the words, “section 21A”, the following words:-

78 if any,

79 SECTION 8. Section 26 (a) of chapter 119 of the General Laws is hereby amended by
80 inserting after the first sentence the following new sentence:-

81 The court may thereafter grant temporary or permanent custody of the child to the child’s
82 parent without a finding that the child’s other parent is unfit or adjudicating the child in need of
83 care and protection.

84 SECTION 9. Clause (2) of subsection (b) of section 26 of chapter 119 is hereby amended
85 by striking out subclause (i) and inserting in place thereof the following subclause:-

86 (i) any person, including the child’s parent, who is found by the court to be qualified to
87 give care to the child;

88 SECTION 10. Section 3 of chapter 210 of the General Laws is hereby amended by
89 adding the following subsection:-

90 (e) For the purposes of this subsection, the term “child” shall include a young adult as
91 defined in section 21 of chapter 119. If at least two years have passed since the court entered an
92 order terminating parental rights pursuant to this chapter or chapter 119, a child whose parents
93 were the subject of that order may file a motion requesting that the court vacate the order with
94 respect to 1 or both of the child’s former parents, but only if all of the following apply: (i) the
95 child is at least 12 years of age; (ii) the court has determined, after a hearing under section 29B
96 of chapter 119, that adoption is no longer the permanency plan for the child; and (iii) either the

97 child has not been adopted or, if the child has been adopted, a court has entered an order
98 terminating the parental rights of the child's adoptive parents or the adoptive parents have
99 voluntarily surrendered their parental rights. The child shall sign the motion in the absence of a
100 showing of good cause as to why the child is unable to sign the motion. The court shall order that
101 an evidentiary hearing be held and provide notice, in the manner prescribed for a petition filed
102 pursuant to section 24 of chapter 119, of the hearing to the child's former parents. Neither parent
103 shall be considered a party for the purpose of the motion, nor shall either have an independent
104 right to be heard, though a parent's testimony may be offered into evidence if the parent is called
105 as a witness by a party. The court shall grant the motion if it determines by a preponderance of
106 evidence that vacating the order terminating parental rights is in the child's best interests. The
107 court shall specify in writing the factual basis for its determination. As soon as practicable after
108 granting the motion, the court shall enter an order pursuant to subsection (b) of section 26 of
109 chapter 119, provided that the order is in the best interests of the child.

110 SECTION 11. Section 10 of this act shall apply regardless of whether the two year
111 requirement is met before, on, or after the effective date of this act.