

HOUSE No. 204

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 minimizing trauma to 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>Jennifer Balinsky Armini</i>	<i>8th Essex</i>	<i>2/21/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/23/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>5/4/2023</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>6/6/2023</i>

HOUSE No. 204

By Representative Meschino of Hull, a petition (accompanied by bill, House, No. 204) of Joan Meschino and others relative to minimizing trauma to court-involved children and families. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act minimizing trauma to 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. Chapter 18B of the General Laws is hereby amended by inserting after
2 section 25 the following section:-

3 Section 26. The department shall report each quarter on the number of cases in which it
4 took custody of a child under section 51B of chapter 119 without first obtaining a court order
5 under section 24 or 24A of chapter 119, the total number of children over whom it assumed
6 custody in those cases, the median amount of time between the department taking custody and its
7 employees requesting court approval of that decision, and the number of cases in which it took
8 more than four hours to request court approval. Data in the report shall be broken down by area
9 office. The report shall be made publicly available on the department’s website consistent with
10 section 19 of chapter 66.

11 SECTION 2. Section 1 of Chapter 119 of the General Laws is hereby amended by
12 inserting the following sentence at the end of the third paragraph:-

13 Consideration of the child’s long-term well-being shall include consideration of how to
14 best preserve and promote the child’s cultural, racial, ethnic, religious, and linguistic identities.

15 SECTION 3. Subsection (c) of section 23 of chapter 119 of the General Laws, as
16 appearing in the 2020 Official Edition, is hereby amended by striking out said section and
17 inserting in place thereof the following:-

18 (c) (1) Whenever the department places a child in foster care, the department shall
19 immediately commence a search to locate any relative of the child, including the parents of
20 siblings or half-siblings who have custody of the siblings or half-siblings, or other adult person
21 who has played a significant positive role in that child’s life in order to determine whether the
22 child may appropriately be placed with that relative or person if, in the judgment of the
23 department, that placement would be in the best interest of the child.

24 (2) The department shall seek to identify any minor sibling or half-sibling of the child.
25 The department and the court shall ensure that children removed from their home and placed in
26 the department’s care, custody or responsibility are placed together with all siblings and half-
27 siblings unless the department makes a showing to the court by clear and convincing evidence
28 that (i) a joint placement is contrary to the safety or well-being of any of the siblings or half-
29 siblings; or (ii) in cases involving more than four siblings or half-siblings, the department made
30 active efforts to place all of the children together but, notwithstanding those efforts, it is
31 impracticable for the department to do so. The court shall make written findings in support of its
32 decision to deny the joint placement and may make any other order regarding placement of
33 siblings and half-siblings in the children’s best interests.

34 (3) In the case of siblings or half-siblings who are not jointly placed, the department shall
35 provide for frequent visitation and other ongoing interaction between them, unless the
36 department makes a showing to the court by clear and convincing evidence that frequent
37 visitation and other ongoing interaction is contrary to the safety or well-being of any of the
38 children; provided further, that the court shall make written findings in support of its decision to
39 deny the frequent visitation or other ongoing interaction. Any sibling or half-sibling may ask the
40 court at any time to review its decision regarding visitation or other ongoing contact or any
41 action by the department implementing the court's decision.

42 (4) Notwithstanding any provision of this section, the department may separate a child
43 from siblings or half-siblings to avoid immediate risk of harm to any child; provided, however,
44 that if the department does separate a child from a sibling or half-sibling without prior court
45 approval, it shall file a petition for court approval of its placement decision within 1 business day
46 after the placement and provide notice to all counsel in any proceeding held pursuant to this
47 chapter or chapter 210. The court shall hold a hearing regarding the placement change within 7
48 days of filing the petition. The department shall bear the burden of showing by clear and
49 convincing evidence at the hearing that the best interests of 1 or more of the siblings or half-
50 siblings require a separate placement.

51 (5) Any child who is placed apart from any sibling or half-sibling, even if placed with
52 other siblings or half-siblings, may ask the court at any time to review its decision authorizing a
53 separate placement or any action by the department implementing the court's decision. The
54 department shall bear the burden of showing by clear and convincing evidence that its current
55 placement arrangements are warranted.

56 (6) If the court authorizes the department to place siblings or half-siblings in separate
57 placements, or if the department places siblings or half-siblings in separate placements pending
58 review by the court, the department shall make ongoing efforts to remedy any concerns found by
59 the department that led to the separate placements, including the impracticability of joint
60 placement of larger sibling or half-sibling groups. The department shall document its efforts in
61 the case plan.

62 (7) Notwithstanding the definition of “custody” in section 21, the court may make any
63 order to ensure the joint placement of, frequent visitation with, or other ongoing interaction with
64 siblings or half-siblings as may be in the children’s best interests, including an order to place a
65 child with his or her sibling or half-sibling in a foster home notwithstanding department
66 regulations preventing such placement, provided the foster parent is willing to accept the child.

67 (8) The department shall develop and implement a plan to increase the number of
68 placements available for siblings and half-siblings. The department shall report annually on the
69 status and effectiveness of its plan, including past and current data regarding the joint placement
70 of siblings and half-siblings in the department’s care, custody, or responsibility, to the joint
71 committee on children, families and persons with disabilities not later than March 31 of each
72 year.

73 SECTION 4. Section 24 of Chapter 119 of the General Laws is hereby amended by
74 striking out the third paragraph and inserting in place thereof the following paragraph:

75 If the court is satisfied after the petitioner testifies under oath that there is reasonable
76 cause to believe that: (i) the child is suffering from serious abuse or neglect or is in immediate
77 danger of serious abuse or neglect; (ii) immediate removal of the child is necessary to protect the

78 child from serious abuse or neglect; and (iii) continuation of the child in their home is contrary to
79 their best interests, the court may issue an emergency order transferring custody of the child for
80 up to 72 hours to the department or to a licensed child care agency or individual described in
81 subclause (i) of clause (2) of subsection (b) of section 26. The court also may make any other
82 appropriate order, including conditions and limitations, about the care and custody of the child as
83 may be in the child's best interest, including, but not limited to, those set forth in subclauses (1)
84 to (3) of subsection (b) of section 26. In assessing whether continuation of a child in their home
85 is contrary to their best interests under this section and section 29C, the court shall consider the
86 potential short and long term harms of transferring custody to the department or to another
87 person or entity, including trauma caused by removal of the child from their home.

88 SECTION 5. Chapter 119 of the General Laws is hereby amended by inserting after
89 section 24 the following section:-

90 Section 24A. When the juvenile court is closed for business, any justice acting under
91 section 9(vi)(B) of chapter 211B may grant relief authorized under the third paragraph of section
92 24. Such relief may be granted and communicated by telephone to an agent of the department,
93 who shall record such order on a form of order promulgated for such use by the chief justice of
94 the trial court and who shall deliver a copy of such order on the next court day to the clerk-
95 magistrate of the juvenile court having venue and jurisdiction over the matter. If relief has been
96 granted without the filing of a written petition with the clerk under section 24, the department
97 shall appear in court when the court is next open for business to file a written petition under
98 section 24. The matter shall then proceed under section 24.

99 Any order issued under this section and any documentation in support thereof shall be
100 certified at the latest on the next business day by the clerk-magistrate or register of the court
101 issuing such order to the court having venue and jurisdiction over the matter.

102 The trial court shall promulgate rules specifying the procedures applicable to matters
103 initiated under this section. All such proceedings shall be recorded.

104 SECTION 6. Section 26A of Chapter 119 of the General Laws is hereby amended by
105 inserting the following two sentences at the end of subsection (h):-

106 If the crime was committed more than five years before the date on which it is reviewed
107 under this subsection, the mental health or criminal justice professional shall presume that it is
108 irrelevant to the question of whether the individual poses a risk of harm to the child, and the
109 department shall presume that the offense is irrelevant to the person's application. The mental
110 health or criminal justice professional may not presume that any crime or group of crimes, other
111 than ones referred to in subsection (f) or (g), create a presumption that the person poses a risk of
112 harm to the child. The department may not establish any presumption that any such crime or
113 group of crimes warrants rejection of the person's application.

114 SECTION 7. Section 26A of Chapter 119 of the General Laws is hereby amended by
115 adding the following new subsection:-

116 (i) The department may not reject a person's application to become a foster parent on the
117 basis of criminal history information other than under subsections (f), (g), and (h).

118 SECTION 8. Chapter 119 of the General Laws is hereby amended by inserting after
119 section 26C the following section:-

120 Section 26D. (a) Whenever a court transfers temporary custody or responsibility of a
121 child to the department, a licensed child care agency or an individual as described in clause (i) of
122 paragraph (2) of subsection (b) of section 26, the court shall order regular and frequent visitation
123 between the parent and child unless the court finds that such visitation would be harmful to the
124 child's health or safety. The court may review and modify any such order or finding at any time
125 thereafter upon the motion of any party for good cause shown.

126 (b) An order entered pursuant to subsection (a) shall specify the frequency, duration and
127 other terms of parent-child visitation, including the extent to which the visitation shall be
128 supervised or unsupervised. In setting the terms of the visitation, the court shall consider the
129 child's age, developmental stage and any other needs of the child.

130 (c) There shall be a rebuttable presumption that parent-child visitation will be
131 unsupervised. The court may require that all visitation be supervised only upon a finding that
132 unsupervised visitation would endanger the safety or well-being of the child.

133 (d) (i) Regular and frequent parent-child visitation shall not be less than once every week
134 and shall include at least 2 hours of visitation per week unless the court determines that such
135 visitation would be harmful to the safety or well-being of the child.

136 (ii) The court may not suspend parent-child visitation for more than 4 weeks or terminate
137 parent-child visitation unless it finds, by clear and convincing evidence, that parent-child
138 visitation would harm the safety or well-being of the child.

139 (e) The court may issue orders for communication between the parent and child,
140 including telephone calls, video calls, electronic mail, text messaging or regular mail. When

141 issuing such orders, the court shall consider the child's age, developmental stage and any other
142 needs of the child.

143

144 SECTION 9. Section 29 of chapter 119 of the General Laws, as appearing in the 2020
145 Official Edition, is hereby amended by inserting after the second paragraph the following
146 paragraphs:

147 No later than five business days before any non-emergency change in a child's or a
148 young adult's placement or any non-emergency hospitalization, and no later than one business
149 day after any emergency change in a child's or a young adult's placement or any emergency
150 hospitalization, the department shall provide notice of the change in placement or hospitalization
151 to the child's or the young adult's attorney.

152 No later than the first business day thereafter, the department shall provide notice to a
153 child's attorney if it receives a report under section 51A and the child is the subject of the report.
154 No later than the first business day thereafter, the department shall provide notice to a child's
155 attorney or a young adult's attorney if it receives a report under section 51A that raises
156 substantial questions regarding the suitability of the child's or young adult's current placement or
157 any of the child's or young adult's service providers.

158 No later than the first business day thereafter, the department shall provide notice to a
159 child's or young adult's attorney whenever it becomes aware of: (1) the child or young adult
160 being arrested; (2) the child's or young adult's potential involvement in any proceeding under
161 this chapter or any criminal investigation or proceeding; (3) the child or young adult being

162 suspended from school; or (4) the child or young adult being the subject of any proceeding that
163 could result in his or her suspension or expulsion from school.

164 SECTION 10. Section 51B of Chapter 119 of the General Laws is hereby amended by
165 striking out the first sentence of subsection (c) and inserting in place thereof the following
166 sentences:-

167 If the department has reasonable cause to believe that (i) a child is suffering from serious
168 abuse or neglect or is in immediate danger of serious abuse or neglect; and (ii) immediate
169 removal without first obtaining a court order under section 24 or 24A is necessary to protect the
170 child from serious and imminent physical harm, it shall take the child into its immediate
171 temporary custody. If the department takes the child into its temporary custody under this
172 subsection, it shall, within four hours, obtain judicial approval of such action from the juvenile
173 court or, if the juvenile court is closed for business, any justice acting under section 9(vi)(B) of
174 chapter 211B. To obtain such approval, the department employees who made the reasonable
175 cause determination shall provide the court a sworn affidavit stating the basis of that
176 determination or, if providing information to the court by telephone, shall do so under oath and
177 shall provide the court with a sworn affidavit when the court is next open for business. The
178 matter shall then proceed as set forth in sections 24 or 24A of this chapter.

179 SECTION 11. Section 51B of Chapter 119 of the General Laws is hereby amended by
180 striking out subsection (e).

181 SECTION 12. Section 5-207 of Chapter 190B of the General Laws is hereby amended by
182 adding the following sentence at the end of subsection (a):-

183 The court’s consideration of what would be in the best interest of the minor shall include
184 consideration of how to best preserve and promote the minor’s cultural, racial, ethnic, religious,
185 and linguistic identities.

186 SECTION 13. Section 3 of Chapter 210 of the General Laws is hereby amended by
187 striking out the last sentence of the second paragraph of subsection (c) and inserting in place
188 thereof the following two sentences:-

189 In making the determination, the health, safety, and well-being of the child shall be of
190 paramount, but not exclusive, concern. The court’s consideration of the child’s well-being shall
191 include consideration of how to best preserve and promote the child’s cultural, racial, ethnic,
192 religious, and linguistic identities.

193 SECTION 14. Section 9 of Chapter 211B of the General Laws is hereby amended by
194 striking out subparagraph (vi) of the third paragraph and inserting in place thereof the following
195 subparagraph:

196 (vi) the responsibility to establish, manage and implement a mandatory emergency
197 judicial response system:

198 (A) for all judges other than judges of the Juvenile Court department, except when the
199 chief justice of the trial court determines that the participation by a particular judge would create
200 a hardship for such judge; and

201 (B) for all judges of the Juvenile Court department, except when the chief justice of the
202 trial court determines that the participation by a particular judge would create a hardship for such
203 judge, to hear matters under section 24A of chapter 119.

204 SECTION 15. The department of children and families shall promulgate regulations to
205 implement section 9 of this act no later than six months from the effective date of this act.