

By Mr. Murphy of Peabody, petition of Gary D. Jones, Louis P. Bertonazzi, David J. Mofenson and John E. Murphy, Jr., relative to dispensing with the need for consent in certain cases commenced by the Department of Public Welfare, Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT PERTAINING TO DISPENSING WITH REQUIRED CONSENT IN CERTAIN CASES.

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 3 of chapter 210 of the General Laws as most recently
2 amended by chapter 800 section 2 of the Acts of 1972 is hereby
3 further amended by striking all material after the subparagraph
4 (a) (i) and inserting the following: —

5 (ii) a decree dispensing with the consent of persons named in
6 section 2 of chapter 210 of the General Laws, other than that of
7 the child, has been granted by the court.

8 (b) The department of public welfare or any licensed child care
9 agency or any person having the care or custody of a child for a
10 period of one year or more may commence a proceeding,
11 independent of a petition for adoption, in the probate court in
12 any county where said department or agency has an office or
13 where said child resides, to dispense with the need for consent of
14 any person named in section two to the adoption of a child in the
15 care or custody of said department, agency or person. Notice of
16 such proceeding shall be given to such person in a manner
17 prescribed by the court. Which notice shall inform the person that
18 he or she has the right to be present at the hearing, the right to be
19 represented by counsel and that if the person is indigent the court
20 will appoint counsel to represent the person. The court shall
21 appoint independent counsel to represent the child named in said
22 petition.

23 The court shall issue a decree dispensing with a need for said
24 consent on notice of any petition for adoption of such child
25 subsequently sponsored by said department or agency if it finds
26 that the best interest of the child requires that the consent of the
27 child's parent(s) or other person(s) named in the petition be
28 dispensed with. Pending a hearing on the merits of a petition filed
29 under this paragraph, temporary custody may be awarded to the
30 petitioner.

31 The petitioner seeking to dispense with the required consent of
32 a parent to the adoption of a minor child shall have the burden of
33 proceeding and of establishing by clear and convincing evidence
34 the following:

35 1. That the parental-child relationship is irretrievably severed,
36 through the action or inaction of the parent or other person
37 named in the petition notwithstanding the best efforts of the
38 petitioner to strengthen and encourage the parent-child
39 relationship.

40 2. That the continued maintenance of the parental relationship
41 is detrimental to the child.

42 3. That dispensing with the consent of the parent or other
43 person named in the petition will enable the petitioner to place
44 the child in an adoptive home and that such placement is in the
45 best interests of the child.