HOUSE . . . . . No. 661

By Mr. Lawton of Brockton, petition of John E. Murphy, Jr., and Mark E. Lawton relative to dispensing with required consent in certain adoption proceedings. The Judiciary.

The Commonwealth of Massachusetts

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

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:

Section 3 of chapter 210 of the General Laws as most recently amended by chapter 800 section 2 of the Acts of 1972 is hereby further amended by striking said section and substituting therefore the following: —

(a) Whenever a petition for adoption is filed by a person having the care or custody of a child, or, whenever a petition to dispense with the need for consent to adoption is filed by the Department of Social Services or agency having custody pursuant to a permanent final order under General Laws Chapter 119 Section 26 of Section 23C, the consent of the persons named in section two, other than that of the child, shall not be required if:

(i) The person to be adopted is eighteen years of age or older, or if

(ii) The court hearing the petition finds that the allowance of the petition is in the best interests of the child. In determining the best interst of the child, the court shall consider the ability, capacity, fitness and readiness of the child's parents or other person named in section two to assume parental responsibility and the quality of the relationship between such person(s) and the child and shall also consider the ability, capacity, fitness, and readiness of the petitioner(s) and the child.

Subsection (ii) above shall not apply to a person who has care and custody of the child pursuant to a foster home placement by

24 the Department of Social Services or a licensed child care agency
25 except as set forth in (a) above. In such a case the standards set out
26 in (b) (i, iv) below shall apply.
27 (b) When a child is in the care and custody of the Department of
28 Social Services or a licensed child care agency, said department or
29 agency may commence proceeding independent of a petition for
30 adoption to dispense with the need for consent of any person
31 named in section two to the adoption of said child. Said depart-
32 ment or agency may not commence such proceeding until it has
33 had the care or custody of the child for a period of three (3) months
34 or until a parent has either consented to the adoption of the child
35 or requested in writing initiation of proceedings under this section.
36 The Department of Social Services or any licensed child care
37 agency may commence a proceeding under this section in the
38 Probate Court of Suffolk County or in any other county in which
39 said department or agency maintains an office. The person named
40 in the petition shall have the right upon request to transfer of the
41 proceedings to the county in which he resided at the commence-
42 ment of the proceeding. Notice of such proceeding shall be given
43 to such person in a manner prescribed by the court. Notice shall
44 inform the person that he or she has the right to be represented by
45 counsel, and that if the person is indigent, the court will appoint
46 counsel to represent the person. In contested proceedings,the
47 court shall appoint counsel to represent the child named in said
48 proceeding.
49 The Court shall issue a decree dispensing with the need for said
50 consent or notice of any petition for adoption of such child subse-
51 quently sponsored by said department or agency if it finds the
52 following:
53 (i) That extraordinary circumstances exist which would gravely
54 affect the welfare of the child, such circumstances to include unfit-
55 ness, abandonment, persistent abuse or neglect or lack of interest
56 in the child, or extended disruption of custody, or extended inabil-
57 ity to maintain or prepare a home for the child; and
58 (ii) That the petitioner or other agency has used or offered
59 appropriate resources available to it to reunite the child and person
60 named in the petition; and

61 (iii) That dispensing with the consent of the parent or other
62 person named in the petition will enable the petitioner to place the
63 child in an adoptive home or to permit adoption by the child's
64 foster parents if desirable;
65 The petitioner shall have the burden of proceeding and proving
66 all of the above. If the petitioner or said department or agency has
67 had custody of the child for less than one (1) year, there shall be a
68 presumption that the parent or other person named in the petition
69 is fit as a parent to the child and that no extraordinary circum-
70 stances exist.
71 If the court issues said decree, the petitioner shall report to the
72 court if the child has not been placed in an adoptive home within
73 three (3) months from the date the court grants said decree; and if
74 the child has not been placed in an adoptive home the court in its
75 discretion may re-open the proceeding commenced pursuant to
76 this section.
77 Pending a hearing on the merits of a petition filed under this
78 section, temporary custody may be awarded to the petitioner, if
79 such custody is not already established.