

By Mrs. Parente of Milford, petition of Marie J. Parente and other members of the General Court for legislation to establish legal status for children in care and protection and adoption proceedings. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT ESTABLISHING LEGAL STATUS FOR CHILDREN IN CARE AND PROTECTION AND ADOPTION 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 23 of Chapter 119 is hereby amended by
2 adding, in line 309, after the words, "in the order of the court", the
3 following new sentence: — In all matters relating to the responsi-
4 bility of the department, consideration shall be given to a child
5 who has attained the age of twelve years as to his or her ability,
6 capacity, and readiness to offer statements on his or her own
7 behalf, and to testify as to his or her own best interest, if the child
8 is able and willing. Such considerations shall become part of the
9 determinations of the department.

10 Section 23 is further amended by inserting in line 27, after the
11 words, 'to control visits to the child,' the following words: —

12 Except that the child shall have the right to maintain reasonable
13 contact and have visits with the parents or guardians, unless deter-
14 mination is made that such visits would be harmful to the child, or
15 would place the child at risk or would endanger the child.

16 Section 26 of Chapter 119 is hereby amended by adding, after
17 the first paragraph, the following paragraph: —

18 In all proceedings relating to the care and protection of children,
19 a child who has attained the age of twelve shall have standing in
20 court to offer statements on his or her own behalf, and to testify as
21 to his or her own best interests, if the child is able and willing. In
22 addition, a presiding judge may request, but not order, that a child

23 who has attained the age of twelve testify as to his or her wishes
24 with regard to the outcome of any proceedings. Such statements,
25 if offered, shall be given due weight and merit in all proceedings,
26 equally to those of all other parties. In all proceedings, the court
27 shall consider the ability, fitness, readiness, and evolving capaci-
28 ties and development of the child.

29 Section 29 of Chapter 119 is hereby amended by inserting, after
30 line 5, the following sentence: — Counsel shall be appointed to
31 represent the child, and the child shall have the right to meet with
32 counsel prior to any proceedings.

33 Counsel appointed to represent the child shall meet with the
34 child prior to any proceedings.

35 Section 29B of Chapter 119 is hereby amended by inserting,
36 after the first paragraph, the following paragraph: —

37 In all proceedings and determinations of the status or best inter-
38 ests of the child, a child who has attained the age of twelve shall
39 have standing in court to offer statements on his or her own
40 behalf, and to testify as to his or her own best interests, if the
41 child is able and willing. In addition, a presiding judge may
42 request, but not order, that a child who has attained the age of
43 twelve testify as to his or her wishes with regard to the outcome of
44 any proceedings. Such statements, if offered, shall be given due
45 weight and merit in all proceedings, equally to those of all other
46 parties. The court shall consider the ability, fitness, readiness, and
47 evolving capacities and development of the child.

1 SECTION 2. Section 1 of Chapter 210 is hereby amended by
2 adding, at the end of the section, the following sentence: — In all
3 proceedings relating to adoption of a child, a child who has
4 attained the age of twelve shall have standing in court to offer
5 statements on his or her own behalf, and to testify as to his or her
6 own best interests. In addition, a presiding judge may request, but
7 not order, that a child who has attained the age of twelve testify as
8 to his or her wishes with regard to the outcome of any proceed-
9 ings. Such statements, if offered, shall be given due weight and
10 merit in all proceedings, equally to those of all other parties. The
11 court shall consider the ability, fitness, readiness, and evolving
12 capacities and development of the child.

13 Section 3 of Chapter 210 of the Massachusetts General Laws,
14 as appearing in the 1990 Official Edition, is hereby amended by
15 adding, in line 18, after the words, “by any party”, the following
16 sentences: —

17 A child who has attained the age of twelve shall have standing
18 in the court and the opportunity to offer statements on his or her
19 own behalf and to testify as to his or her own best interests, if the
20 child is able and willing. In addition, a presiding judge may
21 request, but not order, that a child who has attained the age of
22 twelve testify as to his or her wishes with regard to the outcome
23 of any proceedings. Such statements, if offered, shall be given due
24 weight and merit in all proceedings, equally to those of all other
25 parties. In all matters, the court shall consider the ability, capacity,
26 fitness, readiness, and evolving capacities and development of the
27 child. Counsel shall be appointed to represent the child, and the
28 child shall have the right to meet with counsel prior to any pro-
29 ceedings. Counsel shall present the child’s wishes to the court in
30 any such proceedings.

31 Section 3 of Chapter 210 is hereby amended by adding, after
32 the fourth paragraph, the following paragraph: —

33 In determining whether the best interests of the child will be
34 served by granting a petition for adoption, a child who has
35 attained the age of twelve shall have standing in the court and the
36 opportunity to offer statements on his or her own behalf, and to
37 testify as to his or her own best interests. In addition, a presiding
38 judge may request, but not order, that a child who has attained the
39 age of twelve testify as to his or her wishes with regard to the out-
40 come of any proceedings. Such statements, if offered, shall be
41 given due weight and merit in all proceedings, equally to those of
42 other parties. In all matters, the court shall consider the ability,
43 capacity, fitness, readiness, and evolving capacities and develop-
44 ment of the child.

45 Section 5B of Chapter 210 of the Massachusetts General Laws,
46 is hereby amended by adding, after the first paragraph, the follow-
47 ing paragraph: —

48 In making orders of adoption, the judge shall consider the
49 ability, capacity, fitness, readiness, and evolving capacities and
50 development of the child. A child who has attained the age of
51 twelve shall have standing in the court and the opportunity to

52 offer statements on his or her own behalf, and to testify as to his
53 or her own best interests. In addition, a presiding judge may
54 request, but not order, that a child who has attained the age of
55 twelve testify as to his or her wishes with regard to the outcome of
56 any proceedings. Such statements, if offered, shall be given due
57 weight and merit in all proceedings, equally to those of other par-
58 ties. In all matters, the court shall consider the ability, capacity,
59 fitness, readiness, and evolving capacities and development of the
60 child.

61 Section 21 of Chapter 119 is further amended by adding, at the
62 end of the section, the following paragraph: —

63 “Best interests of the child” shall include, but not be limited to,
64 considerations of precipitating factors and previous conditions
65 leading to any decision made in proceedings, relating to the past,
66 current, and future status of the child, the current state of the fac-
67 tors and conditions, together with an assessment of the likelihood
68 of their amelioration or elimination; the child’s fitness, readiness,
69 ability, and evolving capacities and development; the particulars
70 of the service plan designed to meet the needs of the child within
71 his or her current placement, whether this be within the family
72 unit or within a substitute care placement, and an evaluation, of
73 the effectiveness, suitability, and adequacy of the services pro-
74 vided and the placement decisions, and of the progress of the child
75 or children therein; considerations of providing services and deci-
76 sions in an appropriately timely manner in order to facilitate per-
77 manency planning for the child.