

By Mr. Rogers of Norwood, petition of John H. Rogers and Therese Murray for legislation to make certain technical changes to the law relative to adoption and promoting the welfare of children. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT MAKING CERTAIN TECHNICAL CHANGES TO THE LAW RELATIVE TO ADOPTION AND PROMOTING THE WELFARE OF CHILDREN.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to expedite the adoption process and
3 promote the welfare of the children of the commonwealth, there-
4 fore it is hereby declared to be an emergency law, necessary for
5 the immediate preservation of the public convenience.

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. The second paragraph of section 26 of chap-
2 ter 119 of the General Laws is hereby amended by striking out
3 clause (4), as most recently amended by section 9 of chapter 3 of
4 the acts of 1999, and inserting in place thereof the following
5 clause:—

6 (4) It may enter an order to dispense with the need for consent
7 of any person named in section 2 of chapter 210, to the adoption,
8 custody, guardianship or other disposition of the child named
9 therein, upon a finding that the child is in need of care and protec-
10 tion pursuant to this section and that the best interests of the child
11 will be served by such an order. In determining whether such an
12 order should be made, the standards set forth in section 3 of said
13 chapter 210 concerning an order to dispense with the need for
14 consent to adoption shall be applied. If the child who is the sub-
15 ject of the petition is under the age of 12, and if the court adjudi-
16 cates the child to be in need of care and protection in accordance

17 with this section, the court shall enter an order dispensing with the
18 need for consent to adoption upon finding that the best interests of
19 the child, as defined in paragraph (c) of said section 3 of said
20 chapter 210, will be served thereby. The entry of such an order
21 shall have the effect of terminating the rights of a person named
22 therein to receive notice of or to consent to any legal proceeding
23 affecting the custody, guardianship, adoption or other disposition
24 of the child named therein.

25 The department of social services shall file a petition or, in the
26 alternative, a motion to amend a petition pending pursuant to this
27 section, to dispense with parental consent to adoption, custody,
28 guardianship or other disposition of the child under the following
29 circumstances: (i) the child has been abandoned; (ii) the parent
30 has been convicted by a court of competent jurisdiction of the
31 murder or voluntary manslaughter of another child of such parent,
32 of aiding, abetting, attempting, conspiring or soliciting to commit
33 such murder or voluntary manslaughter or of an assault consti-
34 tuting a felony which resulted in serious bodily injury to the child
35 or to another child of such parent; or (iii) the child has been in
36 foster care in the custody of the state for 15 of the immediately
37 preceding 22 months. For the purposes of this paragraph, a child
38 shall be considered to have entered foster care on the earlier of:
39 (a) the date of the first judicial finding, pursuant to section 24 or
40 this section, that the child has been subjected to abuse or neglect;
41 or (b) the date that is 60 days after the date on which the child is
42 removed from the home. For the purposes of this section, "serious
43 bodily injury" shall mean bodily injury which involves a substan-
44 tial risk of death, extreme physical pain, protracted and obvious
45 disfigurement or protracted loss or impairment of the function of a
46 bodily member, organ or mental faculty. The department shall
47 concurrently identify, recruit, process, and approve a qualified
48 family for adoption.

49 The department need not file such a motion or petition to dis-
50 pense with parental consent to the adoption, custody, guardianship
51 or other disposition of the child if the child is being cared for by a
52 relative or the department has documented in the case plan a com-
53 pelling reason for determining that such a petition would not be in
54 the best interests of the child or that the family of the child has not
55 been provided, consistent with the time period in the case plan,

56 such services as the department deems necessary for the safe
57 return of the child to the child's home if reasonable efforts as set
58 forth in section 29C are required to be made with respect to the
59 child.

60 Notwithstanding the foregoing, the following circumstances
61 shall constitute grounds for dispensing with the need for consent
62 to adoption, custody, guardianship or other disposition of the
63 child: (i) the child has been abandoned; (ii) the parent has been
64 convicted by a court of competent jurisdiction of the murder or
65 voluntary manslaughter of another child of such parent, of aiding,
66 abetting, attempting, conspiring or soliciting to commit such
67 murder or voluntary manslaughter or of an assault constituting a
68 felony which resulted in serious bodily injury to the child or to
69 another child of the parent.

1 SECTION 2. The second paragraph of section 29B of said
2 chapter 119, as appearing in section 12 of said chapter 3, is hereby
3 amended by striking out the first sentence and inserting in place
4 thereof the following sentence:— In the case of a child placed in
5 foster care outside the state in which the home of the parents of
6 the child is located, the permanency plan shall also address
7 whether the out-of-state placement continues to be appropriate
8 and in the best interests of the child.

1 SECTION 3. Paragraph (b) of section 3 of chapter 210 of the
2 General Laws, as appearing in section 17 of said chapter 3, is
3 hereby amended by inserting after the first paragraph the
4 following two paragraphs:—

5 A petition brought pursuant to this paragraph may be filed and
6 a decree entered notwithstanding the pendency of a petition
7 brought under chapter 119 or chapter 201 regarding the same
8 child. The chief justice for administration and management of the
9 trial court may, pursuant to the provisions of section 9 of chap-
10 ter 211B, assign a justice from any department of the trial court to
11 sit as a justice in any other department or departments of the trial
12 court and hear simultaneously a petition filed under this paragraph
13 and any other pending case or cases involving custody or adoption
14 of the same child. A temporary or permanent custody decree shall
15 not be a requirement to the filing of such petition.

16 A juvenile court or a district court shall enter a decree dis-
17 pensing with the need for consent of any person named in sec-
18 tion 2 to the adoption of a child named in a petition filed pursuant
19 to section 24 of chapter 119 in such court upon a finding that such
20 child is in need of care and protection pursuant to section 26 of
21 said chapter 119 and that the best interests of the child as defined
22 in paragraph (c) will be served by such decree. The entry of such
23 decree shall have the effect of terminating the rights of a person
24 named therein to receive notice of or to consent to any legal pro-
25 ceeding affecting the custody, guardianship, adoption or other dis-
26 position of the child named therein. Facts may be set forth either
27 in the care and protection petition filed pursuant to said section 24
28 of said chapter 119 or upon a motion made in the course of a care
29 and protection proceeding, alleging that the allowance of the peti-
30 tion or motion is in the best interests of the child.

1 SECTION 4. The third paragraph of paragraph (c) of said
2 section 3 of said chapter 210, as so appearing, is hereby amended
3 by striking out clause (iii) and inserting in place thereof the
4 following clause:—

5 (iii) a court of competent jurisdiction has transferred custody of
6 the child from the child's parents to the department, the placement
7 has lasted for at least six months and the parents have not main-
8 tained significant and meaningful contact with the child during the
9 previous six months nor have they, on a regular and consistent
10 basis, accepted or productively utilized services intended to cor-
11 rect the circumstances

1 SECTION 5. This act shall take effect as of March 31, 1999.