

Substituted by the House, on motion of Mr. Forman of Plymouth, for a Bill expediting resolution of legal proceedings involving children in need of care and protection (House, No. 6004). December 14.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO PROCEEDINGS INVOLVING CHILDREN IN NEED OF CARE AND PROTECTION.

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 24 of chapter 119 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 inserting after the first sentence the following two sentences: —
4 Said summonses shall include notice that the court may dispense
5 with the consent of the parents to the adoption of the child if it
6 finds that the child is in need of care and protection and that the
7 best interests of the child would be served by said disposition.
8 Notice shall be by personal service upon the parent. If the identity
9 or whereabouts of a parent is unknown, the petitioner shall cause
10 notice in a form prescribed by the court to be served upon such
11 parent by publication of said notice once in each of three
12 successive weeks in such newspaper as the court orders.

1 SECTION 2. The second paragraph of section 26 of said
2 chapter 119, as so appearing, is hereby amended by adding the
3 following clause: —

4 (4) It may enter an order to dispense with the need for consent
5 of any person named in section two of chapter two hundred and
6 ten, to the adoption of a child, upon a finding that the child is
7 in need of care and protection pursuant to this section and that
8 the best interests of the child will be served by such an order. In
9 determining whether such an order should be made, the standards
10 set forth in section three of said chapter two hundred and ten

11 concerning an order to dispense with the need for consent to
12 adoption of a child shall be applied.

13 If the child who is the subject of the petition is under the age
14 of twelve years, and if the court adjudicates the child to be in need
15 of care and protection in accordance with this section, the court
16 shall enter an order dispensing with the need for consent to
17 adoption upon finding that the best interests of the child, as
18 defined by paragraph (c) of section three of said chapter two
19 hundred and ten, will be served thereby.

1 SECTION 3. Said section 26 of said chapter 119, as so
2 appearing, is hereby further amended by striking out the fourth
3 paragraph and inserting in place thereof the following
4 paragraph: —

5 On any petition filed in any court pursuant to this section, the
6 department, parents, person having legal custody of, counsel for
7 a child, the probation officer, guardian or guardian ad litem may
8 petition the court not more than once every six months for a
9 review and redetermination of the current needs of such child
10 whose case has come before the court, except that any person
11 against whom a decree to dispense with consent to adoption has
12 been entered pursuant to clause (4) shall not have such right of
13 petition for review and redetermination. Unless the court enters
14 written findings setting forth specific extraordinary circumstances
15 that require continued intervention by the court, the court shall
16 enter a final order of adjudication and permanent disposition, no
17 later than fifteen months after the date the case was first filed in
18 court; provided, however, that the date by which a final order of
19 adjudication and permanent disposition shall be entered may be
20 extended once for a period not to exceed three months; provided,
21 further, that said extension shall only be granted if the court makes
22 written finding that the parent has made consistent and goal-
23 oriented progress likely to lead to the child's return to the parent's
24 care and custody. Findings in support of the court's final order
25 of adjudication and permanent disposition shall be made in
26 writing within a reasonable time of the court's order. The court
27 shall not lose jurisdiction over the petition by reason of its failure
28 to enter a final order and the findings in support thereof within
29 the time set forth in this paragraph.

1 SECTION 4. Paragraph (b) of section 3 of chapter 210 of the
2 General Laws, as so appearing, is hereby amended by adding the
3 following paragraph: —

4 A juvenile court or a district court shall enter a decree
5 dispensing with the need for consent of any person named in
6 section two to the adoption of a child named in a petition filed
7 pursuant to section twenty-four of chapter one hundred and
8 nineteen in such court upon a finding that such child is in need
9 of care and protection pursuant to section twenty-six of said
10 chapter one hundred and nineteen and that the best interests of
11 the child as defined in paragraph (c) will be served by such decree.
12 Facts may be set forth either in the care and protection petition
13 filed pursuant to said section twenty-four of said chapter one
14 hundred and nineteen or upon a motion made in the course of
15 a care and protection proceeding, alleging that the allowance of
16 the petition or motion is in the best interests of the child.

1 SECTION 5. Paragraph (c) of said section 3 of said
2 chapter 210, as so appearing, is hereby amended by inserting after
3 the second paragraph the following two paragraphs: —

4 In considering such fitness of the child's parent or other person
5 named in section two, the court shall consider including without
6 limitation, the following factors:

7 (i) the child has been abandoned;

8 (ii) the child or another member of his immediate family has
9 been abused or neglected as a result of the acts or omissions of
10 one or both parents, the parents were offered or received services
11 intended to correct the circumstances which led to the abuse or
12 neglect and refused or were unable to utilize such services on a
13 regular and consistent basis such that a substantial danger of
14 abuse or neglect continues to exist;

15 (iii) a court of competent jurisdiction has transferred custody
16 of the child from the child's parents to the department, the
17 placement has lasted for at least six months and the parents have
18 not maintained significant and meaningful contact with the child
19 during the previous six months nor have they, on a regular and
20 consistent basis, accepted or productively utilized services
21 intended to correct the circumstance;

22 (iv) the child is four years of age or older, a court of competent
23 jurisdiction has transferred custody of the child from the child's
24 parents to the department and custody has remained with the
25 department for at least twelve of the last fifteen consecutive
26 months and, the child cannot be returned to the custody of his
27 parents at the end of such fifteen month period; provided,
28 however, that the parents were offered or received services
29 intended to correct the circumstance and refused or were unable
30 to utilize such services on a regular and consistent basis;

31 (v) the child is younger than four years of age, a court of
32 competent jurisdiction has transferred custody of the child from
33 the child's parents to the department and custody has remained
34 with the department for at least six of the last twelve consecutive
35 months and, the child cannot be returned to the custody of his
36 parents at the end of such twelve month period; provided,
37 however, that the parents were offered or received services
38 intended to correct the circumstance and refused or were unable
39 to utilize such services on a regular and consistent basis;

40 (vi) the parent, without excuse, fails to provide proper care or
41 custody for the child and there is reasonable expectation that the
42 parent will not be able to provide proper care or custody within
43 a reasonable time considering the age of the child; provided,
44 however, that the parents were offered or received services
45 intended to correct the circumstance and refused or were unable
46 to utilize such services on a regular and consistent basis;

47 (vii) because of the lengthy absence of the parent or the parent's
48 inability to meet the needs of the child, the child has formed a
49 strong, positive bond with his substitute caretaker; the bond has
50 existed for a substantial portion of the child's life; the forced
51 removal of the child from the caretaker would likely cause serious
52 psychological harm to the child; and the parent lacks the capacity
53 to meet the special needs of the child upon such removal;

54 (viii) a lack of effort by a parent or other person named in
55 section two to remedy conditions which create a risk of harm due
56 to abuse or neglect of the child;

57 (ix) severe or repetitive conduct toward the child or another
58 child in the home of a physically, emotionally or sexually abusive
59 or neglectful nature;

60 (x) the willful failure to visit the child where the child is not
61 in the custody of the parent or other person named in section two;

62 (xi) the willful failure to support the child where the child is
63 not in the custody of the parent or other person named in
64 section two. Failure to support shall mean that the parent or other
65 person named has failed to make material contribution to the
66 child's care when contribution has been requested by the
67 department or ordered by the court;

68 (xii) a condition which is reasonably likely to continue for a
69 prolonged indeterminate period such as alcohol or drug addiction,
70 mental deficiency, or mental illness, and the condition makes the
71 parent or other person named in section two unlikely to provide
72 minimally acceptable care of the child; or

73 (xiii) the conviction of a parent or other person named in
74 section two of a felony offense that the court finds is of such a
75 nature that the child will be deprived of a stable home for a period
76 of years; provided, however, that incarceration in and of itself
77 shall not be grounds for termination of parental rights.

78 For the purposes of this paragraph the term "abandoned" shall
79 mean being left without any provision for support, and without
80 any person responsible to maintain care, custody, and control
81 because the whereabouts of the person responsible is unknown
82 and reasonable efforts to locate that person have been
83 unsuccessful. A brief and temporary absence from the home,
84 without the intent to abandon the child shall not constitute
85 abandonment.

