

HOUSE No. 4058

The Commonwealth of Massachusetts

PRESENTED BY:

Sheila C. Harrington

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the best interests of children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>

<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>

HOUSE No. 4058

By Ms. Harrington of Groton, a petition (subject to Joint Rule 12) of Sheila C. Harrington and others relative to the care and protection of children. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to the best interests of children.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 WHEREAS, this Legislature recognizes that children are defenseless and that there is no
2 greater moral obligation upon this Legislature than to provide for the care and protection of our
3 children and that our child welfare system needs to be strengthened by establishing a clear policy
4 of the Commonwealth that the best interests of the children must be paramount and shall have
5 precedence at every stage of court proceedings. The best interests of the child shall be the
6 standard for court determinations as to whether a child should be removed from a home,
7 temporarily or permanently, wherein the child has been abused or neglected, remain in a home
8 wherein the child has been abused or neglected or reunited with his or her family in a home
9 wherein the child has been abused or neglected; and

10 □WHEREAS This Legislature finds that children deserve and require competent, responsible
11 parenting and safe, secure, loving, and nurturing homes. This legislature finds that children who
12 have been harmed or are threatened with harm are less likely than other children to realize their
13 full educational, vocational, and emotional potential, and become law-abiding, productive, self-
14 sufficient citizens, and are more likely to become involved with the mental health system, the
15 juvenile justice system, or the criminal justice system, as well as become an economic burden on
16 the State. This legislature finds that prompt identification, reporting, investigation, services,
17 treatment, adjudication, and disposition of cases involving children who have been harmed or are
18 threatened with harm are in the children’s, their families’, and society’s best interests because the
19 children are defenseless, exploitable, and vulnerable. This legislature recognizes that many
20 relatives and other loving nurturing and responsible citizens are willing and able to provide a
21 nurturing and safe placement for children who have been harmed or are threatened with harm.

22 □Chapter 119 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended
23 by striking out section 1 and inserting in place thereof the following section:—

24 □Section 1. (a) It is hereby declared to be the policy of this commonwealth to make paramount
25 the best interests of the child by directing its efforts, first, for the care and protection of the
26 children of the Commonwealth of Massachusetts; then to strengthen the family unit if possible
27 and if determined to be in the best interests of the child; to assist and encourage the use by any
28 family of all available resources to this end; and to provide substitute care of children, either
29 through temporary foster care or permanent placement, when the family itself, or the resources
30 available to the family, are unable to provide the necessary care and protection to ensure the
31 rights of any child to sound health and normal physical, mental, spiritual and moral development.

32 □The purpose of this chapter is to ensure that the children of the Commonwealth are protected
33 against the harmful effects resulting from the absence, inability, inadequacy or destructive
34 behavior of parents or parent substitutes, and to assure good substitute parental care in the event
35 of the absence, inability, inadequacy or destructive behavior of parents whether temporary or
36 permanent. The health and safety of the child shall be of paramount concern in establishing the
37 best interests of the child and shall include the long term well-being of the child. In all matters
38 and decisions by the department of children and families, the policy of the department, as applied
39 to children in its care and protection or children who receive its services, shall be to determine
40 the best interests of the child. The department's considerations of appropriate services and
41 placement decisions shall be made in a timely manner in order to facilitate permanency planning
42 for the child.

43 □(b) For the purpose of determining the manifest best interests of the child, the department and
44 the court shall consider and evaluate all relevant factors, including, but not limited to:

45 □1) Any suitable permanent custody arrangement with a kinship relative of the child, including,
46 but not limited to, grandparents, aunts, uncles, siblings or adult children of the parent;

47 □(2) The ability and disposition of the parent to provide the child with food, clothing, medical
48 care, or other remedial care, and other material needs of the child;

49 □(3) The capacity of the parent to care for the child to the extent that the child's safety; well-
50 being; and physical, mental, and emotional health will not be endangered upon the child's return
51 home;

52 □(4) The child's ability to form a significant relationship with a parental substitute and the
53 likelihood that the child will enter into a more stable and permanent family relationship as a
54 result of permanent termination of parental rights and duties;

55 □(5) The length of time that the child has lived in a stable, satisfactory environment and the
56 desirability of maintaining continuity;

57 □(6) The depth of the relationship existing between the child and the present custodian;

58 □(7) The present mental and physical health needs of the child and such future needs of the child
59 to the extent that such future needs can be ascertained based on the present condition of the
60 child;

61 □(8) The love, affection, and other emotional ties existing between the child and the child's
62 parent, siblings, and other relatives, and the degree of harm to the child that would arise from the
63 termination of parental rights and duties;

64 (9) The likelihood of an older child remaining in long-term foster care upon termination of
65 parental rights due to emotional or behavioral problems or any special needs of the child;

66 (10) The reasonable preferences and wishes of the child, if the court deems the child to be of
67 sufficient intelligence, understanding, and experience to express a preference;

68 (11) The recommendations for the child provided by the child's guardian ad litem or legal
69 representative.

70 The availability of a non-adoptive kinship placement may not receive greater consideration
71 than any other factor weighing on the manifest best interests of the child.

72 c) A judge may enter an order for the termination of the parent and child relationship when the
73 judge finds from the evidence presented, after giving due consideration to the interests of all
74 parties, that the termination is in the best interests of the child. Notwithstanding the above, all
75 permanency hearings for the termination of parental relationship or reunification with parent
76 shall occur not later than 12 months from the time said child has been removed from the care and
77 custody of said parent. In determining whether it is in the child's best interests that the parent and
78 child relationship be terminated, a judge shall consider each of the following factors:

79 (1) The child's need for continuity of care and caregivers and for timely integration into a
80 stable and permanent home, taking into account the differences in the development and the
81 concept of time of children of different ages;

82 (2) The present and projected physical, mental, and emotional health of all individuals
83 involved to the degree that such affects the welfare of the child, the decisive consideration being
84 the physical, mental, and emotional needs of the child;

85 (3) The quality of the interaction and interrelationship of the child with his or her parent,
86 sibling, relative, or caregivers, including the foster or pre-adoptive parent;

87 (4) Whether the parent, guardian, or custodian of the child has not taken any action or made
88 any effort to maintain a consistent parental, guardianship, custodial relationship, or contact with
89 the child;

90 (5) Evidence that excessive alcohol or drug-related activity continues to exist in a child's home
91 environment or is likely to continue to exist in the future after intervention and services have
92 been provided by law; and

93 (6) To the extent feasible, the child's opinion of his or her own best interests in the matter. In
94 all court and department proceedings that affect the child's past, current and future placements
95 and status, when determining the best interests of the child, there shall be a presumption of
96 competency that a child who has attained the age of 12 is able to offer statements on the child's
97 own behalf and shall be provided with timely opportunities and access to offer such statements,
98 which shall be considered by the department if the child is capable and willing. In all matters
99 relative to the care and protection of a child, the ability, fitness and capacity of the child shall be
100 considered in all department proceedings.

101

102 In the event the court finds compelling evidence, after hearing, that one of the above factors, or
103 a combination of the above factors, exist to the extent they materially affect the best interests of

104 the child, the court shall make a determination to terminate the parental relationship and allow
105 either an open or closed permanent placement of the child forthwith.