

**HOUSE . . . . . No. 92**

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>Bradley H. Jones, Jr.</i>    | <i>20th Middlesex</i>            |
| <i>Linda Dean Campbell</i>      | <i>15th Essex</i>                |
| <i>Carolyn C. Dykema</i>        | <i>8th Middlesex</i>             |
| <i>James J. Dwyer</i>           | <i>30th Middlesex</i>            |
| <i>F. Jay Barrows</i>           | <i>1st Bristol</i>               |
| <i>Tricia Farley-Bouvier</i>    | <i>3rd Berkshire</i>             |
| <i>Colleen M. Garry</i>         | <i>36th Middlesex</i>            |
| <i>Joseph W. McGonagle, Jr.</i> | <i>28th Middlesex</i>            |
| <i>Kimberly N. Ferguson</i>     | <i>1st Worcester</i>             |
| <i>James M. Kelcourse</i>       | <i>1st Essex</i>                 |
| <i>Denise Provost</i>           | <i>27th Middlesex</i>            |
| <i>Bruce E. Tarr</i>            | <i>First Essex and Middlesex</i> |
| <i>Angelo L. D'Emilia</i>       | <i>8th Plymouth</i>              |
| <i>Leah Cole</i>                | <i>12th Essex</i>                |
| <i>Kevin J. Kuros</i>           | <i>8th Worcester</i>             |
| <i>Bradford R. Hill</i>         | <i>4th Essex</i>                 |
| <i>Elizabeth A. Poirier</i>     | <i>14th Bristol</i>              |

*Donald R. Berthiaume, Jr.*

*5th Worcester*

**HOUSE . . . . . No. 92**

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By Mrs. Harrington of Groton, a petition (accompanied by bill, House, No. 92) of Sheila C. Harrington and others relative to the care and protection of children. Children, Families and Persons with Disabilities.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4058 OF 2013-2014.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
—————

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

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

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

32 ensure the rights of any child to sound health and normal physical, mental, spiritual and moral  
33 development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

103           In the event the court finds compelling evidence, after hearing, that one of the above  
104 factors, or a combination of the above factors, exist to the extent they materially affect the best  
105 interests of the child, the court shall make a determination to terminate the parental relationship  
106 and allow either an open or closed permanent placement of the child forthwith.