

HOUSE No. 1441

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 passage of the accompanying bill:

An Act relative to the definition of custody in protection and care of children proceedings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>

HOUSE No. 1441

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1441) of Kay Khan, Denise Andrews and Marcos A. Devers relative to the definition of custody in protection and care of children proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the definition of custody in protection and care of children 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 21 of chapter 119 of the General Laws, as most recently amended
2 by Chapter 240 of the Acts of 2012, is hereby further amended by striking out paragraph 9 and
3 inserting in place thereof following new paragraph:-

4 “Custody”, the power to: (1) determine a child's place of abode, medical care and
5 education; (2) control visits to a child; and (3) consent to enlistments, marriages and other
6 contracts otherwise requiring parental consent. If a child, parent or guardian objects to the
7 carrying out of any power conferred by this paragraph, that child, parent or guardian may take
8 application to the committing court, and the court shall take evidence and make a de novo
9 determination and order on the matter. The court may also make any such determination or
10 order sua sponte. If the court determines it to be in the child’s best interests, the court may order
11 the department to move a child or place a child in a specific foster home, residential program, or
12 other placement and may order the guardian or custodian of a child, including the department, to
13 provide visits and other contact under the conditions, with the frequency, and of a duration
14 specified by the court, between the child and the child’s sibling, half-sibling, parent, guardian,
15 custodian or other person.

16 SECTION 2. Section 23 of said chapter 119 of the General Laws, as appearing in the
17 2010 Official Edition, is hereby amended by deleting paragraph (a)(3) and inserting in place
18 thereof the following:-

19 (a) (3) If a child is without proper guardianship due to death, unavailability, incapacity or
20 unfitness of a parent or guardian or with the consent of a parent or parents, the department may

21 seek, and shall accept, an order of the probate court granting responsibility for the child to the
22 department. Such responsibility shall include the right to: (i) determine the child's abode,
23 medical care and education; (ii) control visits to the child; (iii) consent to enlistments, marriages
24 and other contracts requiring parental consent; and (iv) consent to adoption only when it is
25 expressly included in an order of the court. If a child, parent or guardian objects to the carrying
26 out of any power conferred by this paragraph, that child, parent or guardian may take application
27 to the committing court, and the court shall take evidence and make a de novo determination and
28 order on the matter. The court may also make any such determination or order sua sponte. If the
29 court determines it to be in the child's best interests, the court may order the department to move
30 a child or place a child in a specific foster home, residential program, or other placement and
31 may order the guardian or custodian of a child, including the department, to provide visits and
32 other contact under the conditions, with the frequency, and of a duration specified by the court,
33 between the child and the child's sibling, half-sibling, parent, guardian, custodian or other
34 person. In making any order under this clause, the probate court shall consider section 29C and
35 shall make the written certification and determinations required by said section 29C. If a child is
36 in the care of the department of mental health or the department of developmental services, the
37 responsibility for the child as described in this section and all rights therein contained shall
38 continue in the department. If a person with mental retardation who has been declared mentally
39 incompetent was the responsibility of the department prior to reaching the age of 18, the
40 department shall continue to exercise responsibility for that person until that person is declared to
41 be no longer legally incompetent.