

HOUSE No. 2274

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato and Patricia D. Jehlen

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 to promote the well-being of minor children living with guardians.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>

<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>

HOUSE No. 2274

By Representative Donato of Medford and Senator Jehlen, a joint petition (accompanied by bill, House, No. 2274) of Paul J. Donato and others relative to guidelines for guardians of minor children. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote the well-being of minor children living with guardians.

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 5-106 of chapter 190B of the General Laws is hereby amended by
2 inserting the following new subsections:-

3 (e) For proceedings pursuant to a petition to remove a guardian of a minor child, the
4 guardian shall have and be informed of the right to counsel, and the court shall appoint counsel if
5 the guardian is financially unable to retain counsel, when the guardian makes an initial showing
6 that he or she has been the primary caretaker for the child for at least two years or otherwise for a
7 significant part of the child’s lifetime. This time period may include caretaking provided during
8 the guardianship or before the guardian was appointed.

9 (f) The court may appoint counsel to represent a guardian of a minor during proceedings
10 pursuant to Article V of this chapter if the guardian is financially unable to retain counsel and the
11 court determines at any time in the proceedings that the interest of the guardian is or may be
12 inadequately represented.

13 (g) The court may appoint counsel to represent a prospective guardian of a minor child
14 upon a petition to establish a guardianship if the prospective guardian is financially unable to
15 retain counsel, the petitioner has presented a meritorious claim that the conditions in section 5-
16 206(c) of this chapter have been met, and the court determines that the interest of the prospective
17 guardian is or may be inadequately represented.

18 (h) Any living parent of a minor child whose parental rights have not been terminated
19 shall have and be informed of the right to counsel, and the court shall appoint counsel if the
20 parent or parents are financially unable to retain counsel, when said parent objects to
21 appointment of a guardian of a minor child or when the parent presents a meritorious claim in
22 petitioning to terminate or modify the guardianship of a minor child.

23 SECTION 2. Section 5-204 of said chapter 190B, as so appearing, is hereby amended by
24 inserting, after subsection (a), the following new subsection:-

25 (b) When the court establishes a guardianship of a minor who has at least one living
26 parent whose parental rights have not been terminated, the court's reasons for establishing the
27 guardianship, the petitioner's reasons for petitioning for guardianship, and the parent's reasons
28 for consenting or objecting to the guardianship shall be noted in the order.

29 SECTION 3. Section 5-212 of said chapter 190B, as appearing in the 2014 Official
30 Edition, is hereby amended by inserting after the word "removal", in line 15, the following
31 words:-

32 "brought by someone other than a parent whose parental rights have not been
33 terminated".

34 SECTION 4. Said section 5-212 of said chapter 190B, as so appearing, is hereby further
35 amended by inserting the following new subsections:-

36 (d) After notice and hearing on a petition for removal of a guardian brought by a parent
37 whose parental rights have not been terminated, the court may terminate the guardianship if the
38 minor's parent or parents show by a preponderance of the evidence that the impediments to the
39 parent's custody listed in the order pursuant to G.L. c. 190B, § 5-204(b) have been removed and
40 they are currently fit to parent the child, unless the guardian establishes by clear and convincing
41 evidence that termination of the guardianship would not be in the best interests of the minor. It is
42 presumed that the best interests of the child would not be served by terminating the guardianship
43 if a parent has filed a petition for termination in the past 6 months and such petition was not
44 dismissed under this clause. This presumption may be overcome by clear and convincing
45 evidence. The court may enter orders to facilitate the minor's reintegration into the home of the
46 parent or parents for a reasonable period before the termination.

47 (e) In determining parental fitness for purposes of G.L. c. 190B, § 5-212(d), the court
48 shall determine the ability and willingness of the parent or parents to provide a safe, nurturing
49 environment for the minor.

50 (f) In determining what constitutes the best interest of the ward for purposes of G.L. c.
51 190B, § 5-212(d), the court shall consider the physical, emotional, and educational well-being of
52 the child. In so doing, the court shall look to the history of caregiving or parenting by the parent
53 and the guardian and each party's current ability and willingness to care for the child.