

SENATE NO. 109

AN ACT RELATIVE TO ADOPTION POLICY AND PROCEDURE

*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. Chapter 210 of the General Laws of the Commonwealth is hereby amended by
2 adding the following Preamble:

3 The Commonwealth of Massachusetts is committed to ensuring that the best interests of the
4 child are met by adoption proceedings.

5 The primary purpose of adoption is to help a child become a permanent member of a nurturing
6 family that can give the child the care, protection, and opportunities essential for healthy
7 personal growth and development. The well-being of the adopted child is the main objective in
8 the placement of a child for adoption. The needs of the child shall be the primary focus of
9 adoption proceedings, with full recognition of the interdependent needs and interests of birth
10 parents, legal parents, putative fathers and adoptive parents.

11 The Commonwealth has a compelling interest in providing stable and permanent homes for
12 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and
13 in holding parents accountable for meeting the needs of children.

14 The rights and interests of all parties affected by an adoption proceeding shall be considered and
15 balanced in determining the necessary constitutional protection and appropriate processes.

16 The Commonwealth of Massachusetts is committed to supporting relationships between
17 adopted persons and their birth families when such relationships are desired by the affected
18 parties.

19 The Commonwealth of Massachusetts believes that the parties to adoption proceedings have the
20 following rights and responsibilities:

21 (1) An unmarried mother faced with the responsibility of making crucial decisions about the
22 future of a child, is entitled to privacy, has the right to make timely and appropriate decisions
23 regarding the mother's future and the future of the child, and is entitled to assurance regarding
24 the permanence of an adoptive placement.

25 (2) Children have a right to permanence and stability in adoptive placements.

26 (3) Adopted persons have a right to knowledge of their genetic heritage from both their birth
27 mothers and their birth fathers.

28 (4) Adoptive parents have a constitutionally protected liberty and privacy interest in retaining
29 custody of an adopted child.

30 (5) A putative father who is not married to the child's mother has the right to protection of his
31 interests when he has demonstrated a timely commitment to the responsibilities of parenthood,
32 both during pregnancy and upon the child's birth.

33 (6) An agency shall promote the rights of all persons its serves.

34 (a) An agency's responsibilities shall include, but not be limited to educating all parties on
35 the requirements of the Putative Father Registry.

36 (b) An agency shall inform each mother of the importance to the welfare of her child that
37 she identify the father.

38 (c) An agency shall notify by certified and regular mail any named putative father at his last
39 known address of his rights and responsibilities under this Chapter.

40 (d) An agency shall inform each parent that he or she has the right to designate a religious
41 preference in the child's adoption plan.

42 (e) For every mother or expectant mother who is making an adoption plan, the agency shall
43 search the records of the Putative Father Registry in every state in which the woman has
44 lived or may have visited from conception to birth of the child.

45 Definitions

46 As used solely in this chapter, unless the context requires otherwise, the following definitions
47 apply:

48 (1) "Adopted person" means a person who has been adopted or a person who is the subject of
49 adoption proceedings that are intended to result in that person becoming the legal child of
50 another person.

51 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
52 does not exist genetically.

53 (3) "Adoptive parent" means an adult who has become, or is in the process of becoming, the
54 parent of a child through the legal process of adoption.

55 (4) "Agency" means a public or nonprofit entity licensed by the Commonwealth of
56 Massachusetts or a public or nongovernmental entity that is licensed by any jurisdiction of the
57 United States, and that is expressly empowered to place children preliminary to a possible
58 adoption.

59 (5) "Birth parent" means the genetic parent of the adopted person.

60 (6) "Child" means any person less than 18 years of age.

61 (7) "Court" means a court of record in a competent jurisdiction and in Massachusetts, the
62 Probate and Family Court or Juvenile Court.

63 (8) "Department" means the Department of Social Services.

64 (9) "Extended family member" means a person who is, or was the adopted person's parent,
65 grandparent, aunt or uncle, brother or sister, or child.

66 (10) "Home study" means the home study process conducted by the Department or a duly
67 licensed child-placing authority, that:

68 (a) assists a prospective adoptive parent or family to assess its own readiness to adopt;

69 and

70 (b) assesses whether the prospective adoptive parent or family and home meet

71 applicable standards.

72 (11) "Identifying information" means information that directly reveals or indirectly indicates
73 the identity of a person and/or includes the person's name and/or address.

74 (12) "Legal father" means a man to whom mother is married at the time of the child's birth, or
75 a person adjudicated the father of the child.

76 (13) "Non-identifying information" means information that does not directly reveal or indirectly
77 indicate the identity of a person, including:

78 (a) medical information and information related to general physical characteristics;

79 (b) family information, including marital status and the existence of siblings and

80 extended family members;

81 (c) religious affiliation;

82 (d) educational background information that does not reveal specific programs or

83 institutions attended;

- 84 (e) general occupation;
85 (f) hobbies; and
86 (g) photographs provided by any of the parties involved that were specifically intended
87 to be provided to another party.

88 (14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose
89 parental rights have not been terminated.

90 (15) "Placement" means the arrangement for the care of a child in a family, or foster home, or a
91 child-caring agency.

92 (16) "Placing parent" means a parent who is voluntarily making a plan for adoption.

93 (17) "Records" means all documents, exhibits, and data pertaining to an adoption.

94 (18) "Relinquishment" means the informed and voluntary release in writing of all parental
95 rights with respect to a child by a parent to an agency or individual.

96 (19) "Termination of parental rights" means the process by which a parent's rights to his or her
97 child are legally and permanently terminated, after which the child becomes free for adoption.

98 SECTION 2. Said chapter 210 is further amended by striking out Section 1 as so appearing and
99 inserting in place thereof the following new section:

100 SECTION 1. Nature of adoption; Probate and Family Court or Juvenile Court

101 A married couple or two unmarried individuals, jointly, who are at least 18 years of age and are
102 intending to co-parent the adopted person, or an individual person of full age may petition the
103 Probate and Family Court or Juvenile Court of the county where they, he or she reside(s) for
104 leave to adopt as their, his or her child, another person younger than themselves, himself or
105 herself, unless such other person is his or her spouse or uncle or aunt, of the whole or half
106 blood. A minor may likewise petition, or join in the petition of his or her spouse, for the

107 adoption of a child of one of the parties. If the petitioner has a spouse living, competent to join
108 in the petition, such spouse shall join therein, and upon adoption the child shall in law be the
109 child of both; provided, however, that the prayer of the petition may be granted although the
110 spouse of the petitioner is not a party to the petition if the court finds:

111 (i) the failure of the spouse to join in the petition or to consent to the adoption is excused
112 by reason of prolonged unexplained absence, legal separation, incapacity or
113 circumstances constituting an unreasonable withholding of consent;

114 and

115 (ii) the granting of the petition is in the best interests of the child. If a person not an inhabitant of
116 this commonwealth desires to adopt a child residing here, the petition may be made to the
117 probate court in the county where the child resides.

118 SECTION 3. Said chapter 210 is further amended by striking out section 2 as so appearing and
119 inserting in place thereof the following new section:

120 SECTION 2. Written relinquishment and consent of certain persons; form of consent;
121 identification of father

122 (a)(1) Who must provide relinquishment and consent

123 A decree of adoption shall not be made, except as provided in this chapter, without the written
124 relinquishment and consent of:

125 (i) the mother;

126 (ii) the legal father

127 (iii) any other person whose parental rights have been established;

128 (iv) the Department or agency having custody of the child and the authority to
129 place the child for adoption;

130 (v) the legal guardian of the child if both parents are deceased or their rights have
131 been judicially terminated and the guardian has authority by order of the court to
132 consent to the adoption;

133 (vi) the child, either in writing or in court, if the child is 12 years of age or older
134 shall consent unless the child does not have the cognitive ability to understand
135 the meaning of a consent to adoption. The court shall take into consideration the
136 child's preference for adoption, regardless of the child's age.

137 (2) Consent to adoption of a child is not required from:

138 (i) an individual whose parental relationship to the child has been judicially
139 terminated, or whose relationship with the child has been determined not to exist,
140 or who has waived parental rights;

141 (ii) an individual who has not been married to the mother of the child and who,
142 after the conception of the child, executes a notarized statement denying
143 paternity;

144 (iii) an individual claiming to be the putative father who has not registered as a
145 putative father pursuant to § 20 of this chapter and whose name is not on the
146 child's birth certificate;

147 (iv) the personal representative of deceased parent's estate.

148 (b) Information from birth mothers

149 If an agency or person receiving a child born out of wedlock for purposes of a
150 subsequent adoption receives from the child's mother an executed relinquishment and
151 consent form as prescribed by this chapter, and no person has acknowledged paternity of
152 the child in accordance with chapter 209C or has been adjudicated the father of the child

153 by any court of competent jurisdiction, then the person or agency shall request that the
154 mother shall provide a sworn written statement, executed before a notary and in the
155 presence of two competent witnesses, one of whom shall be selected by the mother, that
156 identifies the child's father and his current or last known address, or the reason why she
157 cannot provide this information. Any such statement shall be used solely for the purpose
158 of notifying the person named as the father of the status of the child.

159 Such written relinquishment and consent shall be executed in accordance with
160 SECTION 2(d) and shall be attested and subscribed before a notary public in the
161 presence of two competent witnesses, one of whom shall be selected by said person. The
162 agency or person receiving custody shall act as guardian of the child until such time as a
163 court of competent jurisdiction appoints a guardian or grants a petition for adoption.

164 Execution of such consent shall be carried out in a manner which shall preserve privacy
165 and confidentiality.. A relinquishment and consent executed in accordance with the
166 provisions of this section shall be final and irrevocable from date of execution.

167 If the person from whom a relinquishment and consent to adoption is required is a
168 member of the armed services, the relinquishment may be executed and acknowledged
169 before two competent witnesses and any person authorized by law to administer oaths.

170 Any relinquishment and consent given outside of the Commonwealth shall be valid for
171 the purpose of this section if it was taken in accordance with laws of the state or the
172 country where it was executed.

173 (c) Timing of execution of relinquishment and consent

174 (1) A mother whose consent to the adoption of a child is required may execute a
175 relinquishment and consent to adoption no sooner than 96 hours after the birth of
176 the child.

177 (2) A father whose consent to the adoption of a child is required may execute a
178 relinquishment and consent at any time including prior to the birth of the child as
179 prescribed by this chapter.

180 (3) The Department or a licensed child-placing agency may execute a consent for
181 the adoption at any time before or during the hearing on the petition for adoption.

182 (4) A child whose consent is required may execute a consent at any time before
183 or during the hearing on the petition for adoption.

184 (d) Form of relinquishment and consent

185 The form of the consent subsequent to birth shall be as follows:

186 I, as the _____(relationship) of _____(name of child), age _____, of the
187 _____sex, born in _____(place of birth), on _____(date of birth), do
188 hereby voluntarily and unconditionally relinquish _____(child) to the care and
189 custody of _____(agency or person receiving custody) for the purpose of
190 adoption or such other disposition as may be made by a court of competent jurisdiction.

191 I waive notice of any legal proceeding affecting the custody, guardianship, adoption or
192 other disposition of _____(child).

193 I UNDERSTAND THAT THIS RELINQUISHMENT AND CONSENT IS FINAL
194 AND CANNOT BE REVOKED.

195 /s/ (person signing relinquishment and giving consent)

196 On this _____ day of _____(insert year), before me personally came and

197 appeared _____ and in my presence duly executed the foregoing instrument, and
198 _____ (he, she) acknowledged to me that _____ (he, she) executed the same as
199 _____ (his, her) free act and deed, fully cognizant of its irrevocability.

200 Date _____

201 State of _____

202 _____

203 Notary Public

204 County of _____

205 Signed by _____ (name of person signing relinquishment and giving consent)

206 as _____ (his, her) freely executed relinquishment and consent in the

207 presence of each of us, and of each other, who thereafter have hereunto signed our

208 names as witnesses.

209 /s/ _____

210 Address

211 /s/ _____

212 Address

213 (e) The form of the relinquishment and consent by a putative father, executed prior to

214 birth shall be as follows:

215 I, _____ as the putative father of the child expected to be born to (name of

216 expectant mother) anticipated to be born in _____ (place of birth), expected to

217 be born on or about _____ (date), do hereby voluntarily and unconditionally

218 relinquish the expected child to the care and custody of _____ (agency or

219 person receiving custody) and hereby consent to (his/her) adoption or such other

220 disposition as may be made by a court of competent jurisdiction. I waive notice of any
221 legal proceeding affecting the custody, guardianship, adoption or other disposition of the
222 expected child.

223 I UNDERSTAND THAT THIS RELINQUISHMENT AND CONSENT TO
224 ADOPTION MAY BE RESCINDED, BUT NO LATER THAN 96 HOURS AFTER
225 THE BIRTH OF THE CHILD, AND THEREAFTER SHALL BE FINAL AND
226 CANNOT BE REVOKED.

227 I understand that this Relinquishment and Consent shall become invalid upon the
228 happening of any of the following:

- 229 1. I marry the mother of the child before the child is born; or
- 230 2. The mother of the child does not execute a relinquishment for or consent
231 to adoption of the child within six (6) months after the birth of the child.
- 232 3. I revoke my Relinquishment and Consent to Adoption, but no later that
233 96 hours after the birth of the child.

234 On this _____ (day) of _____ (year), before me personally came and
235 appeared _____ and in my presence duly executed the foregoing
236 instrument, and he _____ acknowledged to me that he executed the
237 same as his free act and deed, fully cognizant of its implications.

238 Notary Public

239 County of _____

240 Signed by _____ (name of person signing relinquishment and giving consent)

241 as _____ (his, her) freely executed relinquishment and consent in the

242 presence of each of us, and of each other, who thereafter have hereunto signed our

243 names as witnesses.

244 /s/ _____

245 Address

246 /s/ _____

247 Address

248 The _____ (Department or agency) accepts the above

249 relinquishment and consent to adoption by _____ [putative father].

250 Rescission shall become effective upon the Agency's receipt of the putative father's

251 Notice as follows:

252 1. Actual notice received by the Agency within 96 hours from the birth of the child;

253 2. Oral notification followed by written notice delivered to the Agency within 24

254 hours of said oral notification.

255 The form of the notice shall be as follows:

256 I wish to revoke my Relinquishment and Consent to Adoption.

257 _____ (signature) _____ (date)

258 (f) Relinquishment by minor parent -- separate legal counsel

259 A parent who is a minor has the right to relinquish all rights to his/her child and to

260 consent to the child's adoption. The relinquishment shall not be subject to revocation by

261 reason of minority. A relinquishment and consent to adoption executed by a parent who

262 is a minor shall not be valid unless an attorney who does not represent the agency or the

263 prospective adoptive parent(s) has advised the minor parent. Legal fees charged by the

264 minor parent's attorney are an allowable expense that may be paid by the agency and

265 reimbursed by prospective adoptive parent(s).

266 (g) Consequences of relinquishment and consent to adoption

267 (1) A relinquishment and consent to the adoption of a child that is executed by a parent
268 or guardian is final and irrevocable unless a court, in the best interest of the child, orders
269 otherwise to protect the welfare of the child.

270 (2) Any relinquishment and consent given outside of the commonwealth shall be valid
271 for the purpose of this section if it was taken in accordance with laws of the state or the
272 country where it was executed.

273 (3) A voluntary relinquishment of a parent's rights and responsibilities toward a child
274 shall not nullify any responsibility to pay arrearages of child support unless the party to
275 whom the arrearages are owed agrees in writing to waive the payment of the arrearages.

276 (h) Validity of relinquishment

277 (1) A relinquishment shall not be valid unless the parent specifically relinquishes
278 custody of the child to the Department or a licensed child-placing agency, and the
279 Department or agency to which the child is being relinquished has agreed in writing to
280 accept custody of the child until the child is adopted.

281 (2) A voluntary relinquishment of a parent's rights to the Department, or an agency or
282 the child's other parent shall not relieve the parent executing the relinquishment of any
283 duty owed to the child or for the child's support if an adoption does not occur.

284 (i) Setting aside Relinquishment and Consent in cases of fraud or duress

285 The court shall set aside a relinquishment and consent to adoption if the individual who
286 executed the relinquishment and consent establishes by clear and convincing evidence,

287 before a decree of adoption is issued, that the relinquishment and consent was obtained
288 by fraud or duress.

289 SECTION 4. Said chapter 210 is further amended by striking out Section 2A as so appearing
290 and inserting in place thereof the following new section:

291 SECTION 2A. Decree of adoption; entry; conditions precedent

292 (1) A child may be placed for adoption only by:

293 (a) the Department or another licensed adoption agency to which the child has been
294 relinquished for purposes of adoption;

295 (b) the Department or another agency expressly authorized to place the child for
296 adoption by a court order terminating the relationship between the child and the child's
297 parent or guardian;

298 (c) the child's parent(s) with the consent of a licensed placement agency or a court of
299 competent jurisdiction; or

300 (d) a guardian expressly authorized by the court to place the child for adoption.

301 (2) No decree of adoption shall be entered for the adoption of a child until one of the following
302 conditions has been met:

303 (a) The child sought to be adopted has been placed with the petitioners for adoption by
304 the Department or by an agency licensed for the placement of children for adoption; or

305

306 (b) The petitioner is a step-parent of the child sought to be adopted, or

307 (c) The petitioner was nominated in the will of a deceased parent of the child as a

308 guardian or an adoptive parent, or

309 (d) The petition for adoption has been approved in writing by the Department or by an
310 agency authorized by said Department. Any petitioner aggrieved by the refusal of the
311 Department or of an agency to approve such petition after being requested to do so, may
312 appeal such refusal to the probate court in which the petition for adoption is pending,
313 which court shall make final determination as to the allowance or dismissal of the
314 petition.

315 SECTION 5. Said chapter 210 is further amended by striking out Section 2B as so appearing
316 and inserting in place thereof the following new section:

317 SECTION 2B. Adoption Decrees; mandatory language

318 Every decree of adoption entered by the court shall state:

- 319 (1) the name(s) of the petitioner(s) for adoption;
- 320 (2) the name by which the person is to be known;
- 321 (4) the person's date and place of birth, if known;
- 322 (5) the effect of the decree of adoption as stated in
- 323 §6 of this chapter;
- 324 (6) that the adoption is in the best interests of the person; and
- 325 (7) that the adoption is final and irrevocable.

326 Said Chapter 210 is further amended by inserting the following new sections:

327 SECTION 2C. Waiver of home study

328 If the court is satisfied that an adoption is in the best interests of the child, the court may waive
329 the requirement of a home study when a parent or guardian places a child for adoption directly
330 with an extended family member of the child.

331 SECTION 2D(1). Step-parent adoption

332 (1) A parent may relinquish parental rights for the purposes of adoption of a child by the child's
333 other parent's spouse.

334 (2) The child's other parent's spouse shall accept the relinquishment in writing.

335 SECTION 2D(2). Content of relinquishment and consent to adoption – step-parent adoption

336 (1) A relinquishment and consent to adopt shall be in writing. The form of such consent shall
337 be as follows:

338 I, as the (parent) of (name of child), age , of the sex, born in (place of birth), on (date of birth),
339 do hereby voluntarily and unconditionally relinquish (child) to the care and custody of (person
340 receiving custody) and hereby consent to (his/her) adoption. I waive notice of any legal
341 proceeding affecting the custody, guardianship, adoption or other disposition of (child).

342 I UNDERSTAND THAT THIS RELINQUISHMENT AND CONSENT TO ADOPTION IS
343 FINAL AND CANNOT BE REVOKED.

344 /s/ (person giving consent)

345 On this day of (insert year), before me personally came and appearedand
346 in my presence duly executed the foregoing instrument, and (he, she) acknowledged to me that
347 (he, she) executed the same as (his, her) free act and deed, fully cognizant of its irrevocability.

348 Date Commonwealth of

349 Notary Public County of

350 Signed by(name of person giving consent) as (his, her) freely executed
351 consent in the presence of each of us, and of each other, who thereafter have hereunto signed
352 our names as witnesses.

353 witness..... witness.....

354 Address Address
355
356

357 I, step-parent of (child), accept the above relinquishment and consent
358 to adoption of [placing parent].

359 _____

360 /s/(step parent)

361 _____

362 date

363 SECTION 2D(3). Standing to adopt step-child

364 (1) A step-parent has standing to file a petition for adoption of a minor child of his/her spouse
365 if:

366 (a) the spouse has legal and physical custody of the child and the child has been in the
367 physical custody of the spouse and the step-parent during the 60 days preceding the
368 filing of a petition for adoption;

369 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially
370 declared mentally incompetent, had legal and physical custody of the child, and the child
371 has resided primarily with the step-parent during the 12 months preceding the filing of
372 the petition; or

373 (c) the Department or an agency has completed a home study as required by §3B of this
374 chapter and has placed the child with the step-parent.

375 (2) For good cause shown, a court may allow an individual who is not the step-parent but who
376 has the consent of the custodial parent of a child to file a petition for co-parent adoption. The
377 petition shall be treated as if the petitioner were a step-parent.

378 SECTION 2D(4). Consent to adoption by a step-parent/co-parent

379 (1) Upon the filing of the petition for adoption by the step-parent or co-parent, the child's
380 custodial parent shall file a consent to adoption executed pursuant to §2D(2) of this chapter.

381 (2) If the child has attained 12 years of age, the child shall consent to the adoption. The court
382 shall take into consideration the child's preference for adoption, regardless of child's age. In
383 doing so, the court may appoint a guardian ad litem.

384 (3) A custodial parent's consent to adoption by a step-parent or co-parent shall be signed in the
385 presence of a notary and two competent witnesses.

386 (4) A consent shall be in writing and shall state that:

387 (a) the parent executing the consent has legal and physical custody of the child and
388 voluntarily and unequivocally consents to the adoption of the child by the step-parent or
389 co-parent.

390 (b) the adoption shall not terminate the parental relationship between the parent
391 executing the consent and the child; and

392 (c) the parent executing the consent understands and agrees that:

393 (i) the adoption shall terminate the parental relationship between the
394 relinquishing parent and the child and shall terminate any prior court orders
395 relative to the parental relation between the child and relinquishing parent;

396 (ii) a court order for visitation or communication with the child by an individual
397 related to the child through the parent executing the relinquishment or an

398 agreement or order concerning another individual that is approved by the court
399 shall survive the decree of adoption, but that failure to comply with the terms of
400 the order or agreement is not grounds for revoking or setting aside the consent or
401 the adoption.

402 SECTION 2D(5). Waiver of home study and post placement period

403 In a step-parent or co-parent adoption, if the court is satisfied that the adoption is in the best
404 interests of the child, the court may waive the requirement of a home study, six-month post
405 placement supervision and report and grant a decree of adoption.

406 SECTION 2D(6). Legal consequences of adoption of step-child

407 (1) Except as provided in subsections (2), the legal consequences of an adoption of a step-child
408 by a step-parent are the same as the consequences under § 2D(2) of this chapter.

409 (2) An adoption by a step-parent does not affect:

410 the right of the adopted person or a descendant of the adopted person to inheritance or intestate
411 succession through or from the adopted person's deceased former parent who died prior to the
412 adoption.

413 SECTION 5. Said Chapter 210 is hereby amended as follows:

414 SECTION 3. Dispensing with required consent in certain cases

415 (a) Whenever a petition for adoption is filed by a person having the care or custody of a child,
416 the consent of the persons named in section 2, other than that of the child, shall not be required
417 if:

418 (i) the person to be adopted is 18 years of age or older; or

419 (ii) the court hearing the petition finds that the allowance of the petition is in the best
420 interests of the child pursuant to paragraph (c).

421 (b) The Department of Social Services or a licensed child care agency may commence a
422 proceeding, independent of a petition for adoption, in the probate court in any county in which
423 the Department or agency maintains an office, to dispense with the need for consent of any
424 person named in section 2 to adoption of the child in the care or custody of the Department or
425 agency. Notice of such proceeding shall be given to such person in a manner prescribed by the
426 court. The court shall appoint counsel to represent the child in the proceeding unless the petition
427 is not contested by any party. The court shall issue a decree dispensing with the need for
428 consent or notice of any petition for adoption, custody, guardianship or other disposition of the
429 child named therein, if it finds that the best interests of the child as provided in paragraph (c)
430 will be served by the decree. Pending a hearing on the merits of a petition filed under this
431 paragraph, temporary custody may be awarded to the petitioner. The entry of such decree shall
432 have the effect of terminating the rights of a person named therein to receive notice of or to
433 consent to any legal proceeding affecting the custody, guardianship, adoption or other
434 disposition of the child named therein. The Department shall provide notice of the hearing on
435 the merits to any foster parent, pre-adoptive parent or relative providing care for the child
436 informing the foster parent, pre-adoptive parent or relative of his/her right to attend the hearing
437 and be heard. The provisions of this paragraph shall not be construed to require that a foster
438 parent, pre-adoptive parent or relative be made a party to the proceeding.

439 A petition brought pursuant to this paragraph may be filed and a decree entered notwithstanding
440 the pendency of a petition brought under chapter 119 or chapter 201 regarding the same child.

441 The chief justice for administration and management of the trial court may, pursuant to the
442 provisions of section 9 of chapter 211B, assign a justice from any department of the trial court
443 to sit as a justice in any other department or departments of the trial court and hear
444 simultaneously a petition filed under this paragraph and any other pending case or cases
445 involving custody or adoption of the same child. A temporary or permanent custody decree shall
446 not be a requirement to the filing of such petition.

447 A juvenile court or a district court shall enter a decree dispensing with the need for consent of
448 any person named in section 2 to the adoption of a child named in a petition filed pursuant to
449 section 24 of chapter 119 in such court upon a finding that such child is in need of care and
450 protection pursuant to section 26 of said chapter 119 and that the best interests of the child as
451 defined in paragraph (c) will be served by such decree. The entry of such decree shall have the
452 effect of terminating the rights of a person named therein to receive notice of or to consent to
453 any legal proceeding affecting the custody, guardianship, adoption or other disposition of the
454 child named therein. Facts may be set forth either in the care and protection petition filed
455 pursuant to said section 24 of said chapter 119 or upon a motion made in the course of a care
456 and protection proceeding, alleging that the allowance of the petition or motion is in the best
457 interests of the child.

458 The Department of Social Services shall file a petition or, in the alternative, a motion to amend
459 a petition pending pursuant to section 26 of chapter 119 to dispense with parental consent to
460 adoption, custody, guardianship or other disposition of the child under the following
461 circumstances:

462 (i) the child has been abandoned;

463 (ii) the parent has been convicted by a court of competent jurisdiction of the murder or
464 voluntary manslaughter of another child , of aiding, abetting, attempting, conspiring or
465 soliciting to commit such murder or voluntary manslaughter or of any assault
466 constituting a felony which results in serious bodily injury to a child , or
467 aggravated assault or domestic violence;
468 sexual assault on a child,
469 sexual intercourse without consent, if the victim was a child;
470 incest, if the victim was a child;
471 sexual abuse of a child,
472 ritual abuse of a minor, or other felony that the court finds is of such a nature that
473 the child will be deprived of a stable home for a period of years; or
474 (iii) the child has been in foster care in the custody of the Commonwealth for 15 of the
475 immediately preceding 22 months. For the purposes of this paragraph, a child shall be
476 considered to have entered foster care on the earlier of: (a) the date of the first judicial
477 finding, pursuant to section 24 or section 26 of chapter 119, that the child has been
478 subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the
479 child is removed from the home. For the purposes of this paragraph, "serious bodily
480 injury" shall mean bodily injury which involves a substantial risk of death, extreme
481 physical pain, protracted and obvious disfigurement or protracted loss or impairment of
482 the function of a bodily member, organ or mental faculty.

483 The Department shall concurrently identify, recruit, process and approve a qualified family for
484 adoption.

485 The Department need not file a motion or petition to dispense with parental consent to the
486 adoption, custody, guardianship or other disposition of the child, or, where the child is the
487 subject of a pending petition pursuant to section 26 of chapter 119, a motion to amend the
488 petition to dispense with parental consent to the adoption, custody, guardianship or other
489 disposition of the child, if the child is being cared for by a relative or the department has
490 documented in the case plan a compelling reason for determining that such a petition would not
491 be in the best interests of the child or that the family of the child has not been provided,
492 consistent with the time period in the case plan, such services as the department deems
493 necessary for the safe return of the child to the child's home if reasonable efforts as set forth in
494 section 29C of said chapter 119 are required to be made with respect to the child.

495 (c) In determining whether the best interests of the child will be served by granting a petition for
496 adoption without requiring certain consent as permitted under paragraph (a), the court shall
497 consider the ability, capacity, fitness and readiness of the child's parents or other person named
498 in section 2 to assume parental responsibility and shall also consider the ability, capacity, fitness
499 and readiness of the petitioners under said paragraph (a) to assume such responsibilities. In
500 making the determination, the health and safety of the child shall be of paramount, but not
501 exclusive, concern.

502 In determining whether the best interests of the child will be served by issuing a decree
503 dispensing with the need for consent as permitted under paragraph (b), the court shall consider
504 the ability, capacity, fitness and readiness of the child's parents or other person named in section
505 2 to assume parental responsibility, and shall also consider the plan proposed by the department

506 or other agency initiating the petition. In making the determination, the health and safety of the
507 child shall be of paramount, but not exclusive, concern.

508 In considering the fitness of the child's parent or other person named in section 2, the court shall
509 consider, without limitation, the following factors:

510 (i) the child has been abandoned;

511 (ii) the child or another member of the immediate family of the child has been abused or
512 neglected as a result of the acts or omissions of one or both parents, the parents were
513 offered or received services intended to correct the circumstances which led to the abuse
514 or neglect and refused, or were unable to utilize such services on a regular and consistent
515 basis so that a substantial danger of abuse or neglect continues to exist, or have utilized
516 such services on a regular and consistent basis without effectuating a substantial and
517 material or permanent change in the circumstances which led to the abuse or neglect;

518 (iii) a court of competent jurisdiction has transferred custody of the child from the child's
519 parents to the Department, the placement has lasted for at least six months and the
520 parents have not maintained significant and meaningful contact with the child during the
521 previous six months nor have they, on a regular and consistent basis, accepted or
522 productively utilized services intended to correct the circumstances; the parent has not
523 complied with the most current service plan requirements for unification or re-
524 unification; the parent has not established and/or maintained a consistent and or
525 substantial relationship with the child;

526 (iv) the child is four years of age or older, a court of competent jurisdiction has
527 transferred custody of the child from the child's parents to the Department and custody

528 has remained with the department for at least 12 of the immediately preceding 15
529 months and the child cannot be returned to the custody of the parents at the end of such
530 15-month period; provided, however, that the parents were offered or received services
531 intended to correct the circumstances and refused or were unable to utilize such services
532 on a regular and consistent basis;

533 (v) the child is younger than four years of age, a court of competent jurisdiction has
534 transferred custody of the child from the child's parents to the Department and custody
535 has remained with the Department for at least 6 of the immediately preceding 12 months
536 and the child cannot be returned to the custody of the parents at the end of such 12-
537 month period; provided, however, that the parents were offered or received services
538 intended to correct the circumstances and refused or were unable to utilize such services
539 on a regular and consistent basis;

540 (vi) the parent, without excuse, fails to provide proper care or custody for the child and
541 there is a reasonable expectation that the parent will not be able to provide proper care or
542 custody within a reasonable time considering the age of the child provided that the
543 parents were offered or received services intended to correct the circumstances and
544 refused or were unable to utilize such services on a regular and consistent basis;

545 (vii) because of the lengthy absence of the parent or the parent's inability to meet the
546 needs of the child, the child has formed a strong, positive bond with his/her substitute
547 caretaker, the bond has existed for a substantial portion of the child's life, the forced
548 removal of the child from the caretaker would likely cause serious psychological harm to
549 the child and the parent lacks the capacity to meet the special needs of the child upon
550 removal;

551 (viii) a lack of effort by a parent or other person named in section 2 to remedy conditions
552 which create a risk of harm due to abuse or neglect of the child;

553 (ix) severe or repetitive conduct of a physically, emotionally or sexually abusive or
554 neglectful nature toward a child or

555 (x) the willful failure to visit the child where the child is not in the custody of the parent
556 or other person named in section 2;

557 (xi) the willful failure to support the child where the child is not in the custody of the
558 parent or other person named in section 2. Failure to support shall mean that the parent
559 or other person has failed to make a material contribution to the child's care when the
560 contribution has been requested by the Department or ordered by the court;

561 (xii) a condition which is reasonably likely to continue for a prolonged, indeterminate
562 period, such as alcohol or drug addiction, mental deficiency or mental illness, and the
563 condition makes the parent or other person named in section 2 unlikely to provide
564 minimally acceptable care of the child;

565 (xiii) the conviction of a parent or other person named in section 2 of a felony that the
566 court finds is of such a nature that the child will be deprived of a stable home for a
567 period of years. Incarceration in and of itself shall not be grounds for termination of
568 parental rights; or

569 (xiv) whether or not there has been a prior pattern of parental neglect or misconduct or
570 an assault constituting a felony which resulted in serious bodily injury to a child and a
571 likelihood of future harm to a child based on such prior pattern or assault; the parent has
572 a pattern of domestic violence or child abuse and / or has been convicted of a crime of
573 violence or of violating a restraining or protective order; and the facts of the pattern,

574 crime or violation indicate that the person is unfit to maintain a parental relationship
575 with the child;.

576 For the purposes of this section "abandoned" shall mean being left without any provision for
577 support and without any person responsible to maintain care, custody and control because the
578 whereabouts of the person responsible therefore is unknown and reasonable efforts to locate the
579 person have been unsuccessful. A brief and temporary absence from the home without intent to
580 abandon the child shall not constitute abandonment.

581 Hearings on petitions to dispense with consent to adoption that allege that a child has been
582 abandoned shall be scheduled and heard on an expedited basis. Notwithstanding the foregoing,
583 the following circumstances shall constitute grounds for dispensing with the need for consent to
584 adoption, custody, guardianship or other disposition of the child: (i) the child has been
585 abandoned; (ii) the parent has been convicted by a court of competent jurisdiction of the murder
586 or voluntary manslaughter of another child of such parent, of aiding, abetting, attempting,
587 conspiring or soliciting to commit such murder or voluntary manslaughter or of an assault
588 constituting a felony which resulted in serious bodily injury to the child or to another child of
589 the parent. For the purposes of this section, "serious bodily injury" shall mean bodily injury
590 which involves a substantial risk of death, extreme physical pain, protracted and obvious
591 disfigurement or protracted loss or impairment of the function of a bodily member, organ or
592 mental faculty.

593 (d) Nothing in this section shall be construed to prohibit the petitioner and a birth parent from
594 entering into an agreement for post-termination contact or communication. The court issuing the
595 termination decree under this section shall have jurisdiction to resolve matters concerning the

596 agreement. Such agreement shall become null and void upon the entry of an adoption or
597 guardianship decree.

598 Notwithstanding the existence of any agreement for post-termination or post-adoption contact or
599 communication, the decree entered under this section shall be final.

600 Nothing in this section shall be construed to prohibit a birth parent who has entered into a post-
601 termination agreement from entering into an agreement for post-adoption contact or
602 communication pursuant to section 6C once an adoptive family has been identified.

603 SECTION 6. Said Chapter 210 is further amended by striking out Section 3B so appearing and
604 inserting in place thereof the following new section:

605 SECTION 3B. Requirements of prospective adoptive parent(s); home study; registration of
606 interest for pre-adoptive or adoptive placement; criminal record review

607 A child shall not be placed in Massachusetts for purposes of adoption unless the person with
608 whom a child is proposed to be placed has had a home study completed by the Department or an
609 agency licensed by the Commonwealth to determine fitness and readiness as an adoptive parent.

610 The Department or agency shall prepare a written report containing the results of its home
611 study.

612 When deciding whether to approve an adoptive parent applicant the Department or licensed
613 agency shall conduct a review of any misdemeanor offense discovered through a criminal
614 offender record information search conducted pursuant to section 172B of chapter 6 in order to
615 assist the Department or licensed agency in accurately evaluating whether the mere existence of
616 the offense has a substantial effect on the applicant's current or future ability to assume and

617 carry out the responsibilities of an adoptive or pre-adoptive parent in such a manner that the
618 rights of the child to sound health and normal physical, mental, spiritual and moral development
619 are insured. The review shall include, but need not be limited to, a review of the following: the
620 time that has elapsed between the date of the offense and the filing of the registration of interest,
621 the seriousness and specific circumstances of the offense, the number and nature of other
622 offenses, the age of the offender at the time of the offense, the findings and recommendations of
623 the family resource worker assigned by the Department or licensed agency to discuss the facts
624 surrounding the misdemeanor with the applicant, the recommendations given to the family
625 resource worker by personal or employment references chosen by the applicant or received
626 otherwise, the current and future needs of the child to be placed or adopted and the probable
627 effect that the misdemeanor would have on the applicant's ability to fulfill those needs, any
628 reports or recommendations received by the Department or licensed agency from the applicant's
629 parole or probation officer should one have been assigned, a copy of the police report pertaining
630 to the offense in question if obtainable within a reasonable period of time or discussions with a
631 police officer familiar with the facts surrounding the offense and, unless inappropriate,
632 discussions with the child to be placed regarding his current and past relationship with the
633 applicant. Nothing in this section shall be construed to affect the discretion of the Department or
634 licensed agency to approve an adoptive parent applicant.

635 SECTION 7. Said Chapter 210 is further amended by striking out Section 4 as so appearing and
636 inserting in place thereof the following new section:

637 SECTION 4. Notice

638 If the written consent required by section two is not submitted to the court with the petition, the
639 court shall, except where the court under section three has determined that such consent and

640 notice is not required, order notice by personal service upon the parties if the parties are in the
641 Commonwealth, or by certified mail, return receipt requested if not within the Commonwealth.
642 The notice shall direct the person to appear in court at the time specified and to show cause as to
643 why the petition should not be granted.

644 Content of notice

645 The notice required by this Chapter shall contain:

- 646 (1) the caption of the petition;
- 647 (2) the address of the court in which the petition is pending;
- 648 (3) a concise statement of the purpose of the petition; and
- 649 (4) a statement of the method for responding to the notice and
- 650 (5) the consequences of failure to respond.

651 SECTION 4A. Said Chapter 210 is further amended by striking out Section 4A as so appearing
652 and inserting in place thereof the following new section:

653

654 SECTION 4A. Rights of Fathers of children born to unmarried parents

655

656 Whenever the mother of a child born to parents not married to each other has relinquished the
657 child in accordance with section two, or whenever the right of such mother to withhold consent
658 for adoption has been terminated in accordance with section three, notice of such
659 relinquishment or termination shall be afforded to any person who, who has registered with the
660 putative father registry or is named on the child's birth certificate.

661 SECTION 7. Chapter 210 is further amended by inserting the following new sections:

662 SECTION 4B. Putative father registration; definitions

663 As used in this part, unless the context requires otherwise, the following definitions apply:

664 (1) "Child" includes an unborn child.

665 (2) "Putative father" means an individual who may be a child's father but who:

666 (a) is not married to the child's mother on or before the date that the child is born; or

667 (b) has not established paternity of the child prior to the filing of a petition for

668 termination of parental rights to the child for purposes of adoption.

669 (c) the term includes an individual who is:

670 (i) less than 18 years of age; and

671 (ii) not married to the child's mother even though the individual is a presumed

672 father.

673 (3) "Registry" means the Putative Father Registry established under section 4A of this Chapter.

674 SECTION 4C. Putative Father Registry

675 The Putative Father Registry is established within the Department of Social Services, which

676 shall administer the registry.

677 The purpose of the Putative Father Registry is to protect the rights of putative fathers.

678 Registration with the Putative Father Registry entitles the individual to notice of the hearing on

679 termination of parental rights.

680 SECTION 4D. Presumed knowledge of pregnancy; responsibility to register

681 (1) A person who engages in sexual relations with a member of the opposite sex is presumed to

682 know that a pregnancy could result.

683 (2) A person who believes he may be a putative father has a responsibility to register with the
684 Putative Father Registry.

685 (3) A putative father is entitled to notice of termination of parental rights proceedings for the
686 purposes of adoption if the putative father has complied with the requirements of Putative
687 Father Registry or his name is on the child's birth certificate.

688 SECTION 4E. Registration

689 (1) A putative father is entitled to notice of any proceeding to terminate parental rights
690 involving a child whom he might have fathered if he timely files the following information with
691 the Department:

692 (a) his full name and any aliases;

693 (b) address at which he may be served by certified mail, return receipt requested, with
694 notice of a proceeding to terminate parental rights;

695 (c) his social security number;

696 (d) his date of birth;

697 (e) tribal affiliation, if applicable;

698 (f) the mother's name, including all other names known to him that the mother uses, and
699 her address, social security number, and date of birth, if known;

700 (g) the child's name and place of birth, if known; or the approximate date and location
701 of a possible conception, or the approximate expected date of delivery, if known.

702 (2) Such filing shall constitute an acknowledgment and admission of paternity.

703 (3) If a putative father does not have an address where he can receive notice of a termination of
704 parental rights proceeding, he may designate another person as an agent for the purpose of
705 receiving notice. The putative father shall provide the Department with the agent's name and the

706 address at which the agent may be served. Service of notice by certified mail, return receipt
707 requested, constitutes service of notice upon the putative father.

708 (4) A putative father shall register under this section on a registration form prescribed by the
709 Department or with a legibly typed or handwritten statement that provides the required
710 information and that is submitted to the Department pursuant to § 22 of this Chapter. The
711 registration must be signed by the putative father and notarized.

712 (5) A putative father who registers under this section is responsible for providing written
713 updates to the Department regarding any change of the putative father's name or address.

714 (6) In order to be entitled, because of registration, to receive notice of a termination of parental
715 rights proceeding, a putative father's registration form complying with the requirements of this
716 chapter must be received by the Department not later than 96 hours after the child's birth.

717 A putative father may file all information required by this section before a child's birth even
718 though the putative father has no actual knowledge that a pregnancy has occurred or that a
719 pregnancy has continued through gestation.

720 (7) A putative father shall submit a registration form:

721 (a) in person; or

722 (b) by facsimile transmission, mail, courier, or delivery service.

723 (8) When a putative father receives notice that a child in whom he claims a parental interest is
724 the subject of a termination of parental rights proceeding, the putative father shall appear at the
725 hearing held on the petition to terminate parental rights and demonstrate, at a minimum, that the
726 criteria set out in §SUBSTANTIAL RELATIONSHIP of this chapter have been met.

727 (9) A person filing a registration form is presumed to be the father of the child for purposes of
728 adoption. The registration is admissible in a paternity proceeding and creates a rebuttable
729 presumption as to the paternity of the child.

730 SECTION 4F. Duties of the Putative Father Registry

731 (1) The Department shall:

732 (a) prescribe a registration form for the information that a putative father submits under
733 this chapter and

734 (b) make registration forms available through:

735 (i) any licensed adoption agency;

736 (ii) each Clerk of a Probate and Family or Register of a Juvenile Court;

737 (iii) each local health department;

738 (iv) hospitals with maternity departments;

739 (v) town or city clerks; and

740 (vi) such other methods as it deems appropriate.

741 (2) A notice provided by the Department that informs the public about the purpose and
742 operation of the registry shall:

743 (a) be posted in conspicuous places by each:

744 (i) Probate and Family or Juvenile Court;

745 (ii) driver's examination station of the Department of Motor Vehicles;

746 (iii) local health department;

747 (iv) town or city clerk.

748 (b) The notice shall be made available in all major languages spoken in the
749 Commonwealth.

750 (c) The notice shall be made available through school guidance and health departments.

751 (3) The notice under subsection (2) shall include information regarding:

752 (a) where to obtain a registration form;

753 (b) where to register;

754 (c) the circumstances under which a putative father is required to register;

755 (d) the period under this chapter during which a putative father is required to register in
756 order to entitle him to receive notice of an adoption;

757 (e) the information that must be provided to the registry and what other actions the
758 putative father is required to take to preserve a right to notice;

759 (f) the consequences of not submitting a timely registration; and

760 (g) the penalties for filing a false claim with the Putative Father Registry.

761 (4) The Department shall maintain the following information in the registry:

762 (a) the registration information provided by the putative father under this chapter;

763 (b) the date that the Department receives a putative father's registration;

764 (c) the name and affiliation of any person who requests that the Department search the
765 registry to determine whether a putative father is registered in relation to a mother whose
766 child is or may be the subject of a termination proceeding, and the date the request is
767 submitted; and

768 (d) any other information that the Department determines is necessary to access the
769 information in the registry.

770 (5) The Department shall store the registry's data in a manner so that the data is accessible
771 through:

772 (a) the putative father's name;

- 773 (b) the mother's name, including her maiden name and any aliases;
- 774 (c) the date of birth of the putative father, the mother, and the child, if known;
- 775 (d) the child's name, if known; and
- 776 (e) the social security number for the putative father, the mother, and the child, if known.

777 SECTION 4G. Registry search; request; affidavit

778 (1) Only the following persons may request that the Department search the registry to determine
779 whether a putative father is registered in relation to a child who is or may be the subject of a
780 proceeding to terminate parental rights:

- 781 (a) a representative of the Department;
- 782 (b) a representative of an agency when the agency is or may be arranging an adoption;
- 783 (c) any woman who is the subject of a registration, or an attorney authorized to act on
784 her behalf;
- 785 (d) a court that presides over a pending termination of parental rights or a pending
786 adoption;

787 (2) A request for information about a registration from the Department must be in writing.

788 (3) Duties of the Department

789 (a) Whenever the Department receives a request, the Department shall search its records
790 of putative father registrations.

791 (b) The Department may charge a reasonable fee for responding to a request under this
792 section.

793 (c) No later than 24 hours after receiving a request for a registry search, the Department
794 Vital Statistics shall submit an affidavit to the requestor verifying whether a putative
795 father has registered within the period allowed under § 21 of this chapter.

796 (d) Whenever the Department finds that one or more putative fathers are registered, the
797 Department shall submit to the requestor a copy of each registration form with an
798 affidavit.

799 (e) The Department shall furnish a certified copy of the putative father's registration
800 form upon written request by:

801 (1) a putative father whose name appears on the registration form being
802 requested;

803 (2) a mother whose name appears on the registration form being requested;

804 (3) the Department or a licensed child-placing agency;

805 (4) a court that presides over a pending termination of parental rights or a
806 pending adoption;

807 (5) the child support enforcement division of the Department of Revenue;

808 (6) a representative of the Department or designee involved in a care and
809 protection proceeding under chapter 119.

810 (4) Failure of the Department or other entity to post proper notice under this chapter does
811 not relieve a putative father of the obligation to register with the Department.

812 SECTION 4H. Revocation of registration

813 A putative father may revoke a registration at any time by submitting to Department a signed,
814 notarized statement revoking the registration.

815 SECTION 4I. Information confidential

816 Except as otherwise provided in this Chapter, information contained within the Putative Father
817 Registry is confidential.

818 SECTION 4J. Registration of false information

819 A person who knowingly registers false information or requests information from the Putative
820 Father Registry under false pretenses commits a misdemeanor and may be civilly liable for
821 damages.

822 SECTION 4K. Responsibility of each party to protect interests; fraud no defense

823 (1) A fraudulent representation is not a defense for failure to comply with the requirements of
824 the Putative Father Registry and is not a basis for dismissal of a petition for adoption, the vacate
825 of an adoption decree, or an automatic grant of custody to the injured party.

826 (2) A person injured by fraudulent representations or actions in connection with an adoption is
827 entitled to pursue civil or criminal penalties against the person who has made the fraudulent
828 representation.

829 (3) A putative father who resides in another state may contest an adoption prior to the issuance
830 of a decree terminating his parental rights and may assert his interest in the child. If the
831 termination of parental rights proceeding is contested, the court shall hold an evidentiary
832 hearing to determine if:

833 (a) the putative father resides and has resided in another state where the unmarried
834 mother lived or resided either at the time of conception or through a portion of the
835 pregnancy;

836 (b) the mother left that state, concealing the location from the putative father regarding
837 where she could be contacted or located;

838 (c) the putative father has, through every reasonable means, attempted to locate the
839 mother but has been unable to do so; and

840 (d) the putative father has complied with the requirements of the state where the mother
841 previously resided or was located in order to protect and preserve his parental interest
842 and rights concerning the child.

843 The Department shall provide the person filing with evidence of the filing within twenty four
844 hours and shall at the same time, send notice of the filing to such mother by registered mail at
845 her address as stated on the putative father registration or to such other address as the
846 Department determines to be correct after making every reasonable effort to locate such mother.

847 Upon request of any person or agency receiving a child for the purpose of adoption, the
848 Department shall search its records of putative father registrations.

849 (4) The Department may charge a reasonable fee for responding to a request under this section.

850 (5) No later than 24 hours after receiving a request for a registry search, the Department shall
851 submit an affidavit to the requestor verifying whether a putative father has registered within the
852 period allowed under this chapter.

853 (6) Whenever the Department finds that one or more putative fathers are registered, the
854 Department shall submit to the requestor a copy of each registration form with an affidavit.

855 SECTION 4L. Presumed knowledge that child may be adopted without notice

856 A putative father who is not married to the mother of the child is presumed to know that the
857 child may be adopted without his consent unless he complies with the requirements of this
858 chapter.

859 SECTION 4M. Notarized denial of paternity; no entitlement to notice

860 (1) Execution of a notarized denial of paternity of a child is a voluntary act that constitutes a
861 waiver of all parental rights to the child, except for the duty to pay support if paternity is
862 established or presumed.

863 (2) A notarized denial of paternity is irrevocable when executed. An individual who has
864 executed a denial of paternity toward a child who is the subject of adoption proceedings shall
865 not be entitled to notice of either the hearing to terminate parental rights or the hearing on an
866 adoption petition.

867 (3) A notarized denial of paternity shall use the following form:

868 DENIAL OF PATERNITY

869 I, ----- voluntarily and unconditionally deny that I am the father of
870 age , of thesex, born in(place of
871 birth), on(date of birth) and I waive notice of any legal proceeding
872 affecting the custody, guardianship, adoption or other disposition of (child).

873 I UNDERSTAND THAT THIS DENIAL OF PATERNITY IS FINAL AND CANNOT
874 BE REVOKED.

875/s/ (person denying paternity)

876 On this day of (insert year), before me personally came and appeared
877and in my presence duly executed the foregoing instrument, and
878 (he,) acknowledged to me that (he,) executed the same as (his,) free act and deed, fully
879 cognizant of its irrevocability.

880 Date Commonwealth of

881 Notary Public County of

882 Signed by(name of person denying paternity) as (his,) freely
883 executed consent in the presence of each of us, and of each other, who thereafter have
884 hereunto signed our names as witnesses.

885 witness..... witness.....

886 Address Address

887 Denial of paternity pre-birth

888 Execution of a notarized denial of paternity may occur prior to the birth of a child. A
889 pre-birth notarized denial of paternity shall use the following form:

890 DENIAL OF PATERNITY

891 I, ----- voluntarily and unconditionally deny that I am the father of a
892 child expected to be born to , on or about (expected date
893 of birth) and I waive notice of any legal proceeding affecting the custody, guardianship,
894 adoption or other disposition of (child).

895 I UNDERSTAND THAT THIS DENIAL OF PATERNITY IS FINAL AND CANNOT
896 BE REVOKED.

897/s/ (person denying paternity)

898 On this day of (insert year), before me personally came and appeared
899and in my presence duly executed the foregoing instrument, and
900 (he,) acknowledged to me that he executed the same as his free act and deed, fully
901 cognizant of its irrevocability.

902 Date Commonwealth of

903 Notary Public County of

904 Signed by(name of person denying paternity) as (his,) freely
905 executed consent in the presence of each of us, and of each other, who thereafter have
906 hereunto signed our names as witnesses.
907 witness..... witness.....
908 Address Address

909 SECTION 4N. Notice to any registered putative father of plan for adoption

910 (1) Notice of the mother's plan for adoption shall be served upon the registered putative
911 father(s) of the child or expected child.

912 (2) Written notice shall be sent by the Department or agency via certified and regular mail to
913 the address as listed in the Putative Father Registry.

914 (3) The written notice shall include at minimum the plan for adoption, the name, address and
915 telephone number of the agency responsible for permanency planning and the putative father's
916 rights and responsibilities for permanency planning.

917 SECTION 8. Said Chapter 210 is amended as follows:

918 SECTION 5. Failure to object after notice; proceedings

919 If, after such notice, a person whose consent is required does not appear and object to the
920 adoption, the court may act upon the petition without his/her consent, subject to his/her right of
921 appeal.

922 SECTION 9. Said Chapter 210 is further amended by striking out Section 5A as so appearing
923 and inserting in place thereof the following new section:

924 SECTION 5A. Children under fourteen; adoption; regulations; removals

925 Upon the filing of a petition for adoption of a child The Department or licensed child

926 placement agency shall submit to the court a written report as will give the court full knowledge
927 as to the desirability of the proposed adoption. The Department or licensed child placement
928 agency shall submit to the court a petition for adoption signed by the petitioner(s), notarized,
929 providing the following information:

- 930 (a) the full names, ages, and addresses of the petitioner(s);
- 931 (b) the current marital status of petitioner(s)
- 932 (c) the date and place of birth of the person to be adopted, if known;
- 933 (d) the name used for the person to be adopted in the proceeding and, if a change in
934 name is desired, the full name by which the adopted person is to be known;
- 935 (e) that it is the desire of the petitioner(s) that the relationship of parent and adopted
936 person be established between the petitioner(s) and the adopted person and to have all
937 the rights and be subject to all the duties of that relationship;
- 938 (f) the facts, if any, that excuse consent on the part of a person whose consent is
939 required for the adoption;
- 940 (g) the name and address, if known, of any person who is entitled to receive notice of
941 the petition for adoption.

942 (2) Attached to or accompanying the petition shall be:

- 943 (a) any written consent required by §2 of this chapter;
- 944 (b) a certified copy of any court order terminating the rights of the adopted person's
945 parents;
- 946 (c) any affidavit from the Putative Father Registry;
- 947 (d) any denial(s) of paternity;

- 948 (e) a certified copy of any existing court order in any pending proceeding concerning
949 custody of or visitation with the adopted person;
- 950 (f) a copy of any agreement with a public agency to provide a subsidy for the benefit of
951 the adopted person with a special need;
- 952 (g) copy of the home study and post placement reports
- 953 (h) certified copy of the birth certificate;
- 954 (i) verification the child is not registered with the Federal Register for Missing Children;
- 955 (j) verification of compliance with the requirements of the Indian Child Welfare Act;
956 and
- 957 (k) verification of compliance with Interstate Compact, if applicable.

958 For good cause shown, the court may allow the filing of the petition without required
959 documents.

960 No decree shall be made upon such a petition until all the required documentation has been
961 received, and the child has resided in the home of the petitioner(s) for six months. In the case of
962 a child who has resided for less than six months in the home of the petitioner, for good cause
963 shown, the court may, in its discretion, waive the requirement of residence. Whenever the
964 requirement of residence in the home of the petitioner

965 (s) is waived under this section, the probate judge shall file a memorandum setting forth the
966 facts upon which such waiver was based.

967 At any time after the report has been filed, the court after notice and hearing shall order the
968 removal of the child from the proposed adoptive home if, in the opinion of the court, such
969 removal is in the best interests of the child. If such removal is ordered, the court shall appoint a
970 guardian who shall be a relative of the child, a person designated by the department of social

971 services or a licensed child placing agency to have custody of the child, with authority to
972 provide for his/her future care.

973 The court may waive the provisions of this section in the case of a petition for the adoption of a
974 child of one of the parties petitioning for said adoption.

975 SECTION 10. Said Chapter 210 is further amended by striking out Section 5B as so appearing
976 and inserting in place thereof the following new section:

977 SECTION 5B. Adoptive custody; factors considered; request for religious designation
978 In making orders for adoption, the judge shall consider the need of the child for loving and
979 responsible parental care and all factors relevant to the physical, mental and moral health of the
980 child.

981 (1) In determining whether to grant a petition to adopt, the court shall consider the best interests
982 of the adopted person, including, but not limited to, future security for the child, familial
983 stability and the petitioner's ability to parent.

984 (2) In a contested adoption proceeding, in addition to the factors set out subsection (1), the
985 court shall consider:

986 (a) the nature and length of any relationship already established between the child to be
987 adopted and any person seeking to adopt him/her;

988 (b) the nature of any family relationship between the child and any person seeking to
989 adopt him/her;

990 (c) the harm that could result to the child from a change in placement;

991 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling
992 of the child;

993 (e) which, if any, of the persons seeking to adopt the child were selected by the placing
994 parent or the Department or agency whose consent to the adoption is required.
995 If, at the time of relinquishment of the child for adoption, the parent or parents of said
996 child requested a religious designation for the child, the court may grant a petition for
997 adoption of the child only to a person or persons of the religious designation so
998 requested, unless a placement for adoption based on such request would not have been in
999 the best interests of the child. If a request for religious designation is not given effect,
1000 such reasons in support of such determination shall be made a part of the records of the
1001 proceedings.

1002 SECTION 11. Said Chapter 210 is further amended by striking out Section 5C as so appearing
1003 and inserting in place thereof the following new section:

1004 SECTION 5C. Inspection of pleadings, reports, etc.; docket book

1005 All petitions for adoption, all reports submitted to the court and all pleadings, papers or
1006 documents filed in connection therewith, docket entries in the permanent docket and record
1007 books shall not be available for inspection, unless a judge of probate and family court of the
1008 county where such records are kept, for good cause shown, shall otherwise order. Such
1009 petitions, reports, pleadings, papers, documents, and permanent docket and record books shall
1010 be segregated. A separate permanent docket book shall be provided for all such entries. This
1011 section shall apply to the index of the court of all such entries, a separate index of which shall
1012 be provided.

1013 All files and records pertaining to adoption proceedings retained by the Department, a licensed
1014 child-placing agency, a lawyer, or any authorized agency are confidential and shall be withheld
1015 from inspection unless authorized by order of the court or as provided in § 5D of this Chapter.

1016 SECTION 12. Said Chapter 210 is further amended by striking out Section 5D as so appearing
1017 and inserting in place thereof the following new section:

1018 SECTION 5D. Release of information concerning adoption

1019 (a) A placement agency, as defined in section nine of chapter twenty-eight A, holding records
1020 relating to an adopted person, the birth parents of an adopted person or the adoptive parents of
1021 an adopted person shall:

1022 (1) release to such adopted person, if he/she has reached the age of eighteen years, upon written
1023 request, information about his/her birth parents which will not identify or tend to lead to the
1024 identification of the birth parents or their present or former locations.

1025 (2) release to a birth parent of an adopted person, upon the birth parent's written request,
1026 information about such adopted person that will not reveal or tend to reveal his/her identity after
1027 adoption or his/her present or former locations, and which will not tend to lead to his/her
1028 identity after adoption or present or former locations.

1029 (3) release to an adoptive parent, if the adopted person is under the age of eighteen years, upon
1030 the adoptive parent's written request, information about the adopted person and his/her birth
1031 parents which will not identify or tend to lead to the identification of the birth parents or their
1032 present or former locations.

1033 Such information shall include such nonidentifying information that the agency holds
1034 concerning the medical, ethnic, socio-economic, and educational circumstances of the person.

1035 The agency, in its discretion, shall further release such nonidentifying information concerning
1036 the circumstances under which the adopted person became available for adoption as it deems to
1037 be in the best interest of the person so requesting.

1038 (b) If the Department or a licensed placement agency, as defined in section nine of chapter

1039 twenty-eight A, has received written permission from a birth parent of an adopted person to
1040 release the identity of the birth parent to the adopted person and the agency has received written
1041 permission from the adopted person, or written permission from the adoptive parents if the
1042 adopted person is under the age of twenty-one, to release the identity after adoption of the
1043 adopted person to the birth parent, then the agency shall release the identity of the adopted
1044 person to the birth parent and the identity of the birth parent to the adopted person; provided,
1045 however, that if the birth parent is surviving, that he or she has given written consent at least
1046 thirty days before the release of the identifying information. The term "birth parent", as used in
1047 this subsection, shall mean a birth mother, or a father named on the birth certificate of the
1048 adopted person filed in court with the adoption papers, or a man who has signed, as father, an
1049 adoption surrender filed in court with the adoption papers.

1050 (c) Information released to a person pursuant to paragraphs (a) and (b) shall be provided in
1051 writing if such person so requests.

1052 (d) Such placement agency shall:

1053 (1) release to the birth parent of an adopted person, upon the birth parent's written request, any
1054 personal data, as defined in section one of chapter sixty-six A, which it holds relating to the
1055 birth parent.

1056 (2) release to an adoptive parent, upon his/her written request, any personal data, as defined in
1057 section one of chapter sixty-six A, which it holds relating to the adoptive parent.

1058 (3) in making any disclosure of information pursuant to this paragraph, the agency shall remove
1059 personal identifiers relating to a third person. No agency shall rely on any exception contained
1060 in clause Twenty-sixth of section seven of chapter four to withhold personal data otherwise
1061 accessible under this paragraph.

1062 (e) All other adoption records held by such placement agency shall be confidential and
1063 shall not be released.

1064 (f) Adoptive parents who subsequently relinquish a child for adoption, shall be
1065 considered birth parents for purposes of this section.

1066 SECTION 13. Said Chapter 210 is further amended by striking out Section 5E as so appearing
1067 and inserting in place thereof the following new section:

1068 SECTION 5E. Department of Social Services adoption report

1069 The Department of Social Services and licensed adoption agencies shall submit a report
1070 detailing the number and nature, as defined jointly by Department and the University of
1071 Massachusetts Center for Adoption Research and Policy in Worcester, of adoptions processed
1072 by the Department during each calendar quarter to be filed with said center on the first day of
1073 each calendar quarter.

1074 SECTION 14. Said Chapter 210 is further amended by striking out Section 6 as so appearing
1075 and inserting in place thereof the following new section:

1076 SECTION 6. Decree of court; force and effect; private hearings

1077 If the court is satisfied of the identity and relations of the persons, and that the petitioner is of
1078 sufficient ability to bring up the child and provide suitable support and education for the child,
1079 and that the child should be adopted, it shall make a decree, by which, except as regards
1080 succession to property, all rights, duties and other legal consequences of the relation of child
1081 and parent shall thereafter exist between the child and the petitioner(s) and his/her kindred, and
1082 such rights, duties and legal consequences shall, except as regards marriage, incest or
1083 cohabitation, terminate between the child so adopted and his birth parents and kindred or any

1084 previous adopting parent; but such decree shall not place the adopting parent or adopted child in
1085 any relation to any person, except each other, different from that before existing as regards
1086 marriage, or as regards rape, incest or other sexual crime committed by either or both. The court
1087 may also decree such change of name as the petitioner may request. If the person so adopted is
1088 of full age, he/she shall not be freed by such decree from the obligations imposed by section six
1089 of chapter one hundred and seventeen and section twenty of chapter two hundred and seventy-
1090 three.

1091 In evaluating whether a petitioner is of sufficient ability to provide suitable support for the
1092 child, the court shall give consideration to assurances by the Department of Social Services that
1093 it will provide an adoption subsidy for the child.

1094 No decree shall be made under this section until there has been filed in the court a statement,
1095 signed and sworn to by the petitioner, or petitioners, setting forth the date of birth and place of
1096 residence of each adopting parent and such other facts relating to each such parent as would be
1097 required by section thirteen of chapter forty-six for the correction of the record of the birth of
1098 the person sought to be adopted, and also a copy of the birth record of such person; provided,
1099 that in case such person has been previously adopted, either a copy of the record of his/her birth
1100 amended to conform to the previous decree of adoption or a copy of such decree may be so
1101 filed; and, provided further, that the filing of any such copy may be dispensed with if the judge
1102 is satisfied that it cannot be obtained.

1103 Every decree of adoption entered by the court shall include the words "This adoption is final
1104 and irrevocable."

1105 The judge may determine that the hearing on any adoption petition shall be held in chambers.
1106 He/she shall, on the request of any party to an adoption proceeding, hold the hearing thereon in

1107 chambers, except that if said petition is contested, the consent of the other party or parties shall
1108 be required. No person shall be allowed to be present at any such hearing unless his/her
1109 presence is necessary either as a party or as a witness, and the judge shall exclude the general
1110 public from the hearing.

1111 The probate judge may determine that the hearing on any adoption petition shall be held in
1112 chambers. The probate judge shall, on the request of any party to an adoption proceeding, hold
1113 the hearing thereon in chambers, except that if said petition is contested, the consent of the other
1114 party or parties shall be required. No person shall be allowed to be present at any such hearing
1115 unless his/her presence is necessary either as a party or as a witness, and the probate judge shall
1116 exclude the general public from the hearing.

1117 SECTION 14. Said Chapter 210 is further amended by striking out Section 6A as so appearing
1118 and inserting in place thereof the following new section:

1119 SECTION 6A. Certificates of adoption

1120 The court shall forthwith, following the making of a decree of adoption, issue to the placing
1121 agency or petitioner(s) a certificate of adoption setting forth all the facts relating to the adopting
1122 parent, or parents, as appearing in the statement required to be filed by section six, the name of,
1123 and all other facts relating to, the person adopted, as appearing in any copy of birth record or
1124 decree of adoption filed as required by said section, the name of the court making such decree
1125 and the date thereof, and, if such decree authorizes a change in the name of the person adopted,
1126 his/her name as so changed.

1127 Certificates under this section shall be made on forms furnished by the commissioner of public
1128 health, and shall provide for the indicating thereon by the adopting parent, or parents, as to
1129 whether or not a correction of the record of the birth of the person adopted is desired; and, in

1130 case such desire is so indicated, the court shall forthwith send a certified copy of such certificate
1131 to the clerk of the city or town where such person was born.

1132 If either of the parents who have adopted a child so request, the register of probate shall issue a
1133 special certificate of adoption upon which the original or prior name of the child and the names
1134 of his/her birthparents shall not appear.

1135 SECTION 15. Said Chapter 210 is further amended by striking out Section 11A as so appearing
1136 and inserting in place thereof the following new section:

1137 SECTION 11A Fees and prohibited activities

1138 (1) A person, other than the Department or a licensed child-placing agency, shall not:

1139 (a) advertise in any public medium that the person:

1140 (i) knows of a child who is available for adoption; or

1141 (ii) is willing to accept a child for adoption or knows of prospective adoptive
1142 parents for a child;

1143 (b) engage in placement.

1144 (2) An individual other than an extended family member or step-parent of a child shall not
1145 obtain legal or physical custody of a child for purposes of adoption unless the individual has a
1146 favorable home study or a court-ordered waiver of the home study.

1147 (3) A person shall be prohibited from knowingly offering, giving, agreeing to give, soliciting,
1148 accepting, or agreeing to accept from another person, a fee or any remuneration either directly
1149 or indirectly, as a condition for placement, relinquishment, or consent to the adoption of a child.

1150 (4) A person in violation this chapter shall be fined an amount not to exceed \$30,000.00 or by
1151 imprisonment in the house of correction for not more than two and one half years or the state
1152 prison for not more that five years, or both.

