

## De-sensationalizing the Child “Divorce”: A Jurisdictional Analysis on a Child’s Role in Terminating Parental Rights

*“Patrick, 14, believes Daniel Holland lost the right to call himself a father on Oct. 13, 1998—the night he killed Patrick’s mother, Liz Holland. That’s why the teen sought—and received—a ‘divorce’ from his biological father today. . . . ‘It’s like a big weight’s been lifted off my shoulders, knowing that I don’t have to worry about him being in my life’ . . . Patrick waited two years for a court to hear his petition. He began his quest to have Daniel Holland’s parental rights terminated when he learned that his father wanted access to his report cards and information about his progress in sports activities and psychological counseling.”<sup>1</sup>*

### I. INTRODUCTION

Patrick Holland’s courageous attempt to terminate his father’s parental rights brought to light the importance of allowing children to play a more significant role in legal matters that greatly affect their lives.<sup>2</sup> The media frenzy surrounding Patrick’s case, however, mischaracterized a common legal procedure used by the Massachusetts’ Department of Social Services (DSS)<sup>3</sup> as well as the courts.<sup>4</sup> The case grabbed the public’s attention because Patrick

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1. Bryan Robinson, *Divorcing Dad: Boy Gets Split from Father Who Killed His Mom, Embarks on Mission to End Abuse* (July 26, 2004) (highlighting Patrick Holland’s fight to terminate his father’s parental rights), at [http://www.abcnews.go.com/sections/US/GoodMorningAmerica/divorcing\\_parents\\_040726.html](http://www.abcnews.go.com/sections/US/GoodMorningAmerica/divorcing_parents_040726.html). Daniel Holland killed Patrick’s mother when Patrick was eight years old. *Id.* Patrick moved in with his mother’s friends, Ron and Rita Lazisky, who eventually became his legal guardians. *Id.* In order for the Lazisky’s to formally adopt Patrick, Daniel Holland’s rights had to be terminated. *Id.*

2. *See id.* (relating Patrick’s story in national news coverage); *see also* Cleo A.E. v. Amber Dawn E., 438 S.E.2d 886, 889 (W. Va. 1993) (noting need for independent determination of child’s best interests); *infra* notes 40-42 and accompanying text (highlighting court’s progressive trend towards allowing children more rights to participate in legal proceedings).

3. For purposes of this Note, the term DSS will refer to all state child protection services even though some states have different names for their respective child welfare departments or agencies.

4. *See supra* note 1 (relating facts of Patrick’s case). Patrick’s case concluded on July 26, 2004. Telephone Interviews with Brian R. Clerkin, Attorney for Patrick Holland, Law Offices of Epstein, Lipsey & Clifford, in Hanover, Massachusetts (October 30, 2004) & Daniel R. Seigenberg, Attorney for the Lazisky Family, Law Offices of Daniel R. Seigenberg, in Sharon, Massachusetts (October 8, 2004) (hereinafter Clerkin & Seigenberg Interviews) (discussing procedural history of Patrick’s case). All of the records pertaining to the case were impounded at the Norfolk County Probate and Family Court. *Id.* Unlike the petitioners in the cases discussed in this Note, Patrick never filed the suit in his own name. *Id.*; *see also infra* Part II.B (discussing termination statutes). Although the DSS terminated Patrick’s father’s parental rights, most of the articles referred to the proceedings as a “divorce” in some capacity. *See, e.g.,* Associated Press, *Murderer Father Agrees to Son’s Request for ‘Divorce’* (July 26, 2004), at

took the initial steps to terminate the legal relationship with his father, rather than the DSS.<sup>5</sup> Initially, Patrick's case could not go forward because of procedural roadblocks: neither Patrick nor his prospective adoptive parents had standing to bring the petition in Massachusetts courts.<sup>6</sup> Ultimately, the DSS stepped in and prosecuted the case against Patrick's father.<sup>7</sup> Otherwise, Patrick's new family could not have adopted him and he would have had to wait until he turned eighteen to be free of legal ties to his incarcerated father.<sup>8</sup>

There have been a few high profile cases involving children attempting to terminate the rights of their biological parents, yet existing case law does not clearly establish the extent to which this is possible.<sup>9</sup> Part II of this Note discusses why the disability of nonage prevents children from accessing certain adult rights and from directly petitioning the courts to terminate parental

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<http://www.msnbc.msn.com/id/5488082/print/1/displaymode/1098/>; Dennis Tatz, *Divorce from Dad Gives Son Freedom to Be Adopted: Killer Father's Decision Was for Himself, Boy Says*, PATRIOT LEDGER (July 27, 2004), available at <http://ledger.southofboston.com/articles/2004/07/27/news/news07.txt>; Margot LeSage, *Court Will Hear Boy's Request to Divorce Dad*, EAGLE TRIB. (April 28, 2004), available at [http://www.eagletribune.com/news/stories/20040428/NH\\_002.htm](http://www.eagletribune.com/news/stories/20040428/NH_002.htm); Chris Summers, *Boy's Historic Bid to 'Divorce' Father* (July 26, 2004), at <http://news.bbc.co.uk/2/hi/americas/3887347.stm>.

5. See *supra* note 1 (detailing facts of Patrick's case); see Clerkin & Seigenberg Interviews (discussing Patrick's case). Normally a state's DSS or other child service agency would move to terminate parental rights after determining that the parents abused, neglected or abandoned their child. See *infra* notes 50-52 and accompanying text (describing issues involved in termination proceedings); *In re Gregory B.*, 542 N.E.2d 1052, 1056 (N.Y. 1989) (detailing general procedure for terminating parental rights); Claudio DeBellis & Marta B. Soja, *Gregory K: Child Standing in Parental Termination Proceedings and the Implications of the Foster Parent-Foster Child Relationship on the Best Interests Standard*, 8 ST. JOHN'S J. LEGAL COMMENT. 501, 509-10 (1993) (expounding upon standing issues in termination of parental rights proceedings).

6. Clerkin & Seigenberg Interviews (relating facts of Patrick's case). The petitioner must establish proper standing in order to bring a case before the court. See DeBellis & Soja, *supra* note 5, at 506-10 (outlining general standing requirements for filing petitions to terminate parental rights). Unlike the petitioners in *Mays* and *Kingsley*, Patrick never filed the petition on his own behalf. See *supra* note 4 and accompanying text (relaying details of Patrick's case). His guardians, the Lazisky family, attempted to bring the case for him, but Judge Langley dismissed the petition because the Lazisky family did not have standing. *Id.* Initially, the DSS did not step in to initiate the petition on Patrick's behalf. *Id.*

7. Clerkin & Seigenberg Interviews (detailing Patrick's case). After Judge Langley dismissed the adoptive parents' petition, the DSS changed its position and decided to prosecute the case against Patrick's father. *Id.* At trial, Daniel Holland voluntarily relinquished his parental rights and ended the case. *Id.*

8. Clerkin & Seigenberg Interviews (discussing important issues in Patrick's case). Although Patrick did not suffer physical injuries as a result of his inability to terminate the rights of his father, Daniel Holland still sought control over his son before the court terminated his rights. See *supra* note 1 (discussing facts of Patrick's case). The Norfolk Probate & Family Court finalized Patrick's adoption by the Lazisky's on March 24, 2005. See Megan Tench, *Boy Who Divorced Parent is Adopted*, BOSTON GLOBE, Mar. 25, 2005, at B2 (detailing conclusion of Patrick's battle). Patrick and his new parents are lobbying for the enactment of "Patrick's Law" in Massachusetts. *Id.* Under this bill, the court would automatically suspend the parental rights of a parent convicted of killing the other and would contain a provision giving the child a right to participate in deciding whether the parent's rights should be permanently terminated. *Id.*

9. Compare *Kingsley v. Kingsley*, 623 So. 2d 780, 783 (Fla. Dist. Ct. App. 1993) (denying child petitioner standing to terminate his mother's parental rights), with *Twigg v. Mays*, No. 88-4489-CA-01, 1993 WL 330624 at \*3 (Fla. Cir. Ct. Aug. 18, 1993) (suggesting child petitioner had standing to terminate parental rights); see also *infra* notes 66-77 and accompanying text (contrasting *Kingsley* with *Mays*).

rights.<sup>10</sup> Part II also touches upon the recent legislative and judicial shift towards recognizing instances when children may access rights despite their alleged disability.<sup>11</sup> Whether these rights include the ability to make legal choices regarding their relationship with their parents remains unclear.<sup>12</sup>

The language of some states' care and protection statutes suggests that there may be an opportunity for a child or a third party acting on behalf of a child to initiate termination proceedings.<sup>13</sup> Part II addresses these laws in three jurisdictions: Massachusetts, Florida, and Pennsylvania.<sup>14</sup> These states are interesting in the context of termination proceedings because of the varying degree of ambiguity in their controlling statutes.<sup>15</sup> Part II also reviews other methods that may allow children to play a larger role in termination hearings, such as appointing independent representation and the option of statutory emancipation.<sup>16</sup> Finally, despite the recent trend to grant more extensive rights to minors, Part II sets forth the conflicting policy concerns that effectively deter law making authorities from over-extending children's rights.<sup>17</sup>

Notwithstanding the disability of nonage and policy concerns, a child should have the right, after proper examination of what is in his or her best interest, to initiate termination proceedings through the appointment of an attorney or guardian ad litem (GAL).<sup>18</sup> Part III of this Note analyzes the judicial interpretations of the Massachusetts, Florida, and Pennsylvania statutes while also proposing new language for the Massachusetts statute that would allow

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10. See *infra* Part II.A.1 (explaining constitutional justifications courts apply when withholding certain rights from children).

11. See *infra* Part II.A.2 (noting shifting judicial perspectives in considering child's wishes regarding legal matters).

12. See David D. Meyer, *The Modest Promise of Children's Relationship Rights*, 11 WM. & MARY BILL RTS. J. 1117, 1121-24 (2003) (outlining Supreme Court's ability to create rights despite record disfavoring such rights). The author suggests that the Court's ability to do this could lead to the creation of a new set of children's rights concerning their own relationships. *Id.* at 1119-20.

13. See *infra* Part II.B (demonstrating varying interpretations of termination statutes regarding standing to bring petition); see also *infra* Part II.C (suggesting use of independent advocate or statutory emancipation when child cannot petition court).

14. See *infra* Part II.B (discussing Massachusetts, Florida, and Pennsylvania statutes regarding standing to initiate termination hearings).

15. See *infra* Part II.B (noting differences between statutes and their interpretations). While there is significant case law interpreting the Florida and Pennsylvania statutes, Massachusetts case law is noticeably deficient. See *infra* notes 53-62 and accompanying text (highlighting Massachusetts' ambiguous statute and scarce case law).

16. See *infra* Part II.C (demonstrating how availability of independent representation and emancipation statute can enhance children's role in proceedings).

17. See *infra* Part II.D (highlighting policy concerns linked to affording adult rights to minors).

18. See *Infra* Part III (proposing standards which will allow children to bring petitions); Scott A. Cannon, *Finding Their Own "Place to Be": What Gregory Kingsley's and Kimberly Mays's "Divorces" from Their Parents Have Done for Children's Rights*, 39 LOY. L. REV. 837, 854 (1994) (concluding Florida courts recognize children's personal rights if "minimal procedural requirements" met); DeBellis & Soja, *supra* note 5, at 516-17 (suggesting courts consider child's maturity in determining whether to terminate parental rights).

children to have a more active role in such cases.<sup>19</sup> Finally, this Note proposes that the Massachusetts Legislature adopt an emancipation statute to enhance children's roles in proceedings that drastically affect their lives.<sup>20</sup> As long as Massachusetts employs adequate procedural safeguards, it can expand rights for children, especially those in desperate predicaments such as Patrick's, who are essentially powerless to escape the legal control of their parents.<sup>21</sup>

## II. HISTORY

### 1. *Different Treatment of Children in the Law*

The law treats children differently than it does adults.<sup>22</sup> Specialized rules and procedures, imposed by statutes and case law, protect children from harms they are more susceptible to because of their age and maturity level.<sup>23</sup> Consequently, children have fewer rights and avenues for redress than adults.<sup>24</sup> Therefore, children frequently rely on third parties to protect their rights, provide safety from harm, and ensure their wellbeing.<sup>25</sup> Courts often justify the limitations on children's rights on the ground that parents typically act in their

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19. See *infra* Part III (discussing merits of different statutes); see also MASS. GEN. LAWS. ch. 119, §§ 24, 26 (2000) (detailing termination procedure). The Massachusetts statute contains ambiguous language regarding who may initiate care and protection proceedings. MASS. GEN. LAWS. ch. 119, § 24, 26 (2000) (stating "a person" may bring petition to terminate parental rights); see also FLA. STAT. § 39.802 (2003) (providing broad language regarding who may initiate proceeding); 23 PA. STAT. ANN. § 2512(a) (West 2001) (listing who may initiate claim to terminate parental rights); see also *infra* Part II.B (describing how courts have applied language of other statutes).

20. See *infra* Part III (advocating use of independent representation or emancipation to facilitate children's needs).

21. See *infra* Part III (emphasizing drastic measures necessary only in severe situations of abuse, neglect or abandonment); see also Cannon, *supra* note 18, at 856 (concluding child "divorces" not likely but more active participation in termination proceedings forthcoming).

22. See Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449, 453-54 (1996) (portraying legal disabilities of minors).

23. *Id.* at 453; see also FED. R. CIV. P. 17(b) (declaring capacity to sue prerequisite to bring an action); Planned Parenthood of Cent. Missouri v. Danforth, 428 U.S. 52, 74-75 (1976) (reiterating state's constitutional authority to regulate minors' conduct more stringently than adults'); Catherine J. Ross, *The Tyranny of Time: Vulnerable Children, "Bad" Mothers, and Statutory Deadlines in Parental Termination Proceedings*, 11 VA. J. SOC. POL'Y & L. 176, 192 (2004) (stipulating children unable to care for themselves in certain situations). The Federal Rules of Civil Procedure require that a guardian or next friend represent the minor. FED. R. CIV. P. 17(c); see also MASS. GEN. LAWS ch. 231, § 85P (2000) (specifying eighteen as age of legal majority and capacity).

24. See Hafen & Hafen, *supra* note 22, at 450 (listing reasons for United States reluctance to create and enforce children's rights); see also Ilse Nehring, "Throwaway Rights": *Empowering a Forgotten Minority*, 18 WHITTIER L. REV. 767, 791 (1997) (detailing children's inability to enforce rights or bring actions for support).

25. See Nehring, *supra* note 24, at 797 (portraying children as "pawns" in larger battle between parents and state). Nehring points out that children's disability of nonage leaves them with no option but to wait for someone else to decide what is in their best interest. *Id.*

children's best interest.<sup>26</sup>

### 1. Constitutional Justifications

Although it is suggested that children possess some constitutional rights, the Supreme Court regularly focuses on the rights of parents regarding the custody, care and control of their children.<sup>27</sup> In a series of landmark decisions, the Supreme Court established a fundamental right to have children, and parents' due process right to raise their children how they see fit, subject to limited government interference.<sup>28</sup> Constitutional cases rarely address children's rights, but the few existing cases suggest that children do not have the corollary fundamental rights that their parents enjoy.<sup>29</sup> In *Bellotti v. Baird*,<sup>30</sup> the Court set forth the proposition that children's rights are limited not only because of their inability to protect themselves and make important decisions, but also because parents have an overriding right to decide what is in the best interest of their offspring.<sup>31</sup> Even when parents abuse or neglect their children and fail to exercise their entitlement to care and protection, their rights may still supercede those of their children.<sup>32</sup>

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26. See *Bellotti v. Baird*, 443 U.S. 622, 637 (1979) (stating children's rights limited due to important role parents play in upbringing); Ross, *supra* note 23, at 193 (explaining parents' right to make decisions for children until termination grounds established).

27. See *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982) (holding courts must prove parental unfitness by clear and convincing evidence before terminating rights); Raymond C. O'Brien, *An Analysis of Realistic Due Process Rights of Children Versus Parents*, 26 CONN. L. REV. 1209, 1220-24 (1994) (evaluating minimum standard courts must use in termination proceedings); see also Hafen & Hafen, *supra* note 22, at 455-56 (admitting courts have recognized children's rights in some contexts); Barbara Bennett Woodhouse, *The Constitutionalization of Children's Rights: Incorporating Emerging Human Rights into Constitutional Doctrine*, 2 U. PA. J. CONST. L. 1, 9 (1999) (noting lack of constitutional rights for children and superior emphasis on parental rights).

28. See, e.g., *Roe v. Wade*, 410 U.S. 113, 170 (1973) (finding due process right to privacy in making decisions regarding procreation); *May v. Anderson*, 345 U.S. 528, 533 (1953) (declaring parents' rights more than just property rights to child); *Skinner v. Oklahoma ex. rel. Williamson*, 316 U.S. 535, 541 (1942) (noting fundamental right to marriage and procreation violated by criminal sterilization practice); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (establishing due process parental right to make educational decisions for children without state interference). *But see* *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stating parent's right to raise children subject to state regulation in some circumstances).

29. See *DeShaney v. Winnebago County Dep't. of Soc. Servs.*, 489 U.S. 189, 195 (1989) (holding child had no substantive due process right for protection from parent); *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989) (determining child had no right to maintain relationship with biological and presumed father). In *Michael H.*, the Court denied a child the right to visit with her biological father because her mother's husband had been her presumptive father since birth. 491 U.S. at 110. The Court announced that it had yet "to decide whether a child has a liberty interest, symmetrical with that of her parent, in maintaining her filial relationship." *Id.* at 130; see also *Roe v. Catholic Charities of Diocese of Springfield, Illinois*, 588 N.E.2d 354, 366 (Ill. App. Ct. 1992) (rejecting child's right to maintain action against adoption agency); Woodhouse, *supra* note 27, at 9 (pointing to lack of discussion on children's rights in constitutional cases).

30. 443 U.S. 622 (1979) (delineating reasons for limiting children's rights).

31. *Id.* at 634 (stressing parental role in care and protection of child justified withholding certain rights from children); see also Nehring, *supra* note 24, at 769 (reiterating reasons why children have fewer rights than adults).

32. See *DeShaney*, 489 U.S. at 203 (rejecting child's claim of due process right to adequate protection

In *DeShaney v. Winnebago County Department of Social Services*,<sup>33</sup> the Wisconsin DSS repeatedly left a young boy in the custody of his father, even after numerous reports of abuse, until an injury left the child with permanent brain damage.<sup>34</sup> The boy's mother and a court appointed GAL, brought a complaint on Joshua's behalf against the DSS for not stepping in sooner, but the Court rejected the claim, holding that there was no substantive due process right for protection by the state from private actors.<sup>35</sup> Justice Rehnquist, writing for the majority in *DeShaney*, noted that if the DSS had acted too soon, the father would have had an actionable claim against the DSS for denial of his due process rights in the termination proceeding.<sup>36</sup> This case exemplifies the tension courts must deal with in balancing the rights of parents with the rights of children.<sup>37</sup> While *DeShaney* implied that parental rights outweigh the rights of their progeny, emerging case law, statutes and international treaties suggest that there is a trend towards creating and emphasizing fundamental rights for

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from parental harm); Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 10 (2004) (noting subordination of children's rights to those of parents and family); Katharine A. Higgins-Shea, Note, *On the Clock: Should State Law Require Child Welfare Workers to Consider Whether There Is Sufficient Time to Obtain Judicial Authorization When Effecting Emergency Removals of Children from Their Parents?*, 38 SUFFOLK U. L. REV. 147, 165 (2004) (noting courts' hesitance to permit removal of children in emergency situations without judicial authorization); Woodhouse, *supra* note 27, at 46-50 (discussing *DeShaney* and courts' inability to harmonize child and parental rights).

33. 489 U.S. 189 (1989).

34. *Id.* at 192-93 (detailing tragic consequences Joshua DeShaney suffered because of abusive father). After finding suspicious injuries on more than five occasions, the Wisconsin DSS still failed to remove Joshua from the home. *Id.*

35. *Id.* at 193-94 (reviewing procedural history). The Court granted certiorari because of the inconsistent analysis applied by the circuit courts in deciding similar cases. *Id.* at 194. The Third Circuit previously ruled that once the DSS got involved and was aware of the abuse, a "special relationship" developed that conferred a duty on the agency to protect the child. *Id.*; see also *Estate of Bailey by Oare v. County of York*, 768 F.2d 503, 510-11 (3rd Cir. 1985) (recognizing claim against state agency after mother's boyfriend murdered child), *overruled by DeShaney v. Winnebago County Dep't. of Soc. Serv.* 489 U.S. 189 (1989). In *Youngberg v. Romero*, 457 U.S. 307 (1982), the Court held that should the state deprive certain individuals of their liberty to the extent that they cannot care for themselves, it had an affirmative duty to provide them with adequate care and protection. 457 U.S. at 317. The Court in *DeShaney* distinguished *Youngberg* and other similar cases, claiming the state did not deprive Joshua of his free will through involuntary commitment and therefore had no affirmative duty to protect him. *DeShaney*, 489 U.S. at 200.

36. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 203 (1989) (highlighting difficulty courts have balancing due process rights of children and parents); see also *Tenenbaum v. Williams*, 193 F.3d 581, 594 (2d Cir. 1999) (finding emergency removal of child violated parents' due process rights despite allegations of sexual abuse). In *DeShaney*, Chief Justice Rehnquist reiterated that Joshua's father, not the state, caused Joshua's injuries. 489 U.S. 189 at 203. Critics contend that under these circumstances, the state injured Joshua as much as Joshua's father. See *id.* at 211-12 (JJ., Brennan, Marshall, & Blackmun, dissenting) (stating inaction of state resulted in violation of Joshua's due process rights). The dissent proposed that by knowing the potential for serious injury and leaving Joshua in the custody of his abusive father, the DSS effectively deprived Joshua of his liberty and thus owed him a duty of protection. *Id.* at 210 (JJ. Brennan, Marshall, & Blackmun, dissenting).

37. See O'Brien, *supra* note 27, at 1215 (contrasting rights of parents and children in termination proceedings); Ross, *supra* note 23, at 187-193 (discussing rights of parents and children in context of women's rights theory).

children.<sup>38</sup>

## 2. *New Perspectives*

In the United States, much of the jurisprudence regarding children's rights has emerged from cases involving children's rights to make certain medical decisions and rights in juvenile criminal proceedings.<sup>39</sup> For example, the Supreme Court has ruled that a minor may receive an abortion without parental consent if the minor receives judicial approval.<sup>40</sup> More significantly, most states now allow minors to be heard in court and the right to independent representation in matters involving minors' substantive rights.<sup>41</sup> This shift towards recognizing children's rights indicates the materialization of a new body of substantive law that will afford children more protection and legal choices.<sup>42</sup>

While protective rights, such as making the Internet safer for children, are important, this Note only focuses on children's rights to make legal choices, specifically, the right to seek termination of the legal relationship with their biological parents.<sup>43</sup> A minor's right to make legal choices partly depends on

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38. See Woodhouse, *supra* note 27, at 48 (concluding *DeShaney* result perpetuated trend of rejecting children's rights in favor of parents' rights). *But see* O'Brien, *supra* note 27, at 1216-18 (suggesting *DeShaney* majority indicated need for changing standards used in terminating parental rights); *id.* at 1247 (acknowledging modern judicial recognition of constitutional rights of children in certain areas). Modern children's rights derive from notions of equal protection, privacy, procedural due process, and freedom of speech. *Id.* at 1248. See generally Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 679(b), 678, 673(b) (2000) (promulgating new federal adoption procedures); MASS. GEN. LAWS. ch. 112, § 12S (2000) (allowing minors to seek abortions without parental consent after receiving judicial authorization); *Bellotti v. Baird*, 443 U.S. 622 (1979) (describing privacy rights of minors to seek abortion without parental consent); *Goss v. Lopez*, 419 U.S. 565 (1975) (upholding juveniles' right to adequate process before suspension from school); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (setting forth juveniles' right to freedom of speech through protest of Vietnam War); *In re Gault*, 387 U.S. 1 (1967) (affirming juvenile's right to due process in criminal proceedings); Convention on the Rights of the Child, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/736 (1989) (highlighting need for global rights for children).

39. See *supra* note 38 and accompanying text (citing abortion and criminal law cases in which Court extended constitutional rights to minors).

40. *Bellotti*, 443 U.S. at 647 (declaring right to petition courts when seeking abortion without parental consent). The Supreme Court held that a minor has a right to seek judicial authorization from a local court for an abortion without parental consent. *Id.* If she proves that she is mature and well-informed, the court may allow her to receive an abortion. *Id.* at 647-48. If she fails to prove her maturity, the court may still allow her to receive an abortion if she can prove it is in her best interest. *Id.*

41. See *In re Adoption/Guardianship No. T97036005*, 746 A.2d 379, 390 (Md. 2000) (determining child's right to request hearing when child opposes petition to terminate parental rights); *Cleo A.E. v. Rickie Gene E.*, 438 S.E.2d 886, 889 (W. Va. 1993) (noting national trend of appointing attorney or guardian to child in cases affecting rights).

42. See Hafen & Hafen, *supra* note 22, at 457 (discussing expansion of children's rights in the United States).

43. See Hafen & Hafen, *supra* note 22, at 461 (comparing differences between protection rights and choice rights). Children's minority status increases the need for protection rights. *Id.* Their age, however, hinders them from accessing certain rights to make legal choices because adults view restriction of such rights as a way to protect children. *Id.*; see also *Bellotti*, 443 U.S. at 635 (reviewing state's ability to limit right of children to make "affirmative choices").

whether denying the right will cause an immediate injury or will merely delay the minor's ability to act.<sup>44</sup> For example, a minor who is unable to make the choice to receive an abortion will suffer a substantial, immediate and life-changing harm by having an unwanted child.<sup>45</sup> Conversely, the ability of minors to marry without parental consent will not inflict serious damage or injury if the court requires the minors to wait.<sup>46</sup> Concerning the ability to terminate parental rights, an abused and neglected child, or a child whose parent is incarcerated, much like the child who is precluded from receiving an abortion, suffers an immediate injury if he or she is not immediately placed with a suitable family.<sup>47</sup> Some court decisions subordinate the immediate threat to the child because of the fear of infringing on parental rights.<sup>48</sup>

While most courts allow children's testimony as to how they feel regarding termination, the child's opinion is rarely dispositive.<sup>49</sup> Furthermore, courts have traditionally refused to allow children to initiate petitions to terminate parental rights on their own behalf.<sup>50</sup> In some states, the DSS has sole authority

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44. See *Moe v. Dinkins*, 533 F. Supp. 623, 627-30 (S.D.N.Y. 1981) (discussing differences in injuries suffered when certain rights are denied).

45. See *Bellotti*, 443 U.S. at 642 (describing potential injury suffered by pregnant minor). The Court explains that the possible harm resulting from the unwanted pregnancy is not diminished by the child's minority status and may in fact be more difficult because of lower levels of maturity, education, and life skills. *Id.*

46. See *Moe*, 533 F. Supp. at 630-31 (comparing injury suffered by pregnant minor with injury suffered by minor wanting to marry). The court points out that although a child may suffer from illegitimacy if the minor parents cannot marry, it is only temporary and the parents can legitimize the child when they reach the requisite age. *Id.* at 630.

47. Compare *Bellotti*, 443 U.S. at 642 (discussing potential permanent injury to pregnant minor), with Cannon, *supra* note 18, at 849 (reviewing injuries suffered by children as result of inability to assert their own rights).

48. See *Ezer*, *supra* note 32, at 22 (contending government may subordinate child's interests when conflicting with parents' because child cannot sue). The author, referring to *DeShaney*, criticized the Court for not holding the DSS responsible despite clear evidence of abuse and injury to the child. *Id.* By depriving the child of an action against the DSS, the Court effectively sanctioned the DSS' failure to intervene. *Id.*; see also Ross, *supra* note 23, at 186 (maintaining *Santosky* standard precludes consideration of child's interest in termination proceedings). Courts cannot terminate parental rights solely on the grounds that doing so is in the best interest of the child. Ross, *supra* note 23, at 186. There must also be a finding based on statutory grounds, such as abuse, neglect, or abandonment. *Id.*

49. See Bridget A. Blinn, *Focusing on Children: Providing Counsel to Children in Expedited Proceedings to Terminate Parental Rights*, 61 WASH. & LEE L. REV. 789, 808 (2004) (noting lack of children's testimony in majority opinions). The absence of children's testimony in most court opinions signifies a lack of respect and an objectification of children as property. *Id.* at 810; see also O'Brien, *supra* note 27, at 1218 (listing importance of parties' opinions in descending order as court, parents then children). But see *Bennett v. Marrow*, 399 N.Y.S.2d 697, 699-700 (N.Y. App. Div. 1977) (emphasizing importance of child's opinion along with other factors in determining best interests).

50. See *Kingsley v. Kingsley*, 623 So. 2d 780, 783 (Fla. Dist. Ct. App. 1993) (holding child has no standing to bring termination petition on own behalf); *Pintek v. Sup. Ct.*, 277 P.2d 265, 268 (Ariz. 1954) (appointing GAL allows child to bring claim on own behalf); *DeBellis & Soja*, *supra* note 5, at 507 (stipulating limitations on minors' standing to bring claims); see also O'Brien, *supra* note 27, at 1232-47 (describing basic procedure for terminating parental rights).

to initiate and prosecute proceedings against parents.<sup>51</sup> In other states, care and protection statutes authorize individuals or entities other than the DSS to bring termination petitions.<sup>52</sup>

*B. Termination Statutes and Standing Requirements: A Jurisdictional Survey*

*1. Massachusetts*

In Massachusetts, the statute regulating the procedure to terminate parental rights states that "a person" can bring a petition for care and protection on behalf of a child who has been abused, neglected or abandoned.<sup>53</sup> The court will then decide whether it is in the child's best interest to terminate parental rights.<sup>54</sup> The statute does not explicitly prohibit children from initiating care and protection petitions, although the language suggests that someone, presumably an adult, must bring the petition on behalf of the child.<sup>55</sup> Additionally, the statute is unclear concerning whether other individuals such as GALs or entities such as hospitals or schools may bring such petitions.<sup>56</sup>

The few cases interpreting this statute reveal a liberal approach to determining standing to bring care and protection petitions.<sup>57</sup> It is unclear, however, whether the same individuals or entities may also petition to terminate parental rights if the DSS decides not to do so.<sup>58</sup> In *In re Care and*

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51. See DeBellis & Soja, *supra* note 5, at 510 (describing different states' treatment of standing issues in termination proceedings); see also D.C. CODE § 16-2305(c) (1989) (providing exclusive authority to DSS, Corporation Counsel, to file neglect petitions); *In re J.J.Z.*, 630 A.2d 186, 191 (D.C. 1993) (denying GAL authority to pursue neglect petition without Corporation Counsel).

52. DeBellis & Soja, *supra* note 5, at 510 (noting broad statutory language employed by some states). The range of permissiveness varies amongst the different statutes. See *infra* Part II.B (describing statutes in three states conferring rights on third parties to bring termination proceedings).

53. MASS. GEN. LAWS ch. 119, § 24 (2000) (describing procedure to commit child to state custody). A care and protection petition asserts that a child has been abused, neglected, or abandoned and is in need of assistance. *Id.*

54. MASS. GEN. LAWS ch. 119, § 26 (2000) (noting judicial procedure after petition filed). Once the care and protection proceeding begins, the court will decide whether the allegations are legitimate, whether removal from the parents' custody is necessary and whether parental rights should be terminated. *Id.* The DSS will usually prosecute the case. *Id.* If it decides not to, the court may allow the petition to continue if requested by another party. See *Custody of a Minor* (No. 1), 434 N.E.2d 601, 605 (Mass. 1982) (setting forth judge's broad authority to act in child's best interest).

55. MASS. GEN. LAWS ch. 119, § 24 (2000) (referring to "a person"). In 1999, the Massachusetts Legislature filed an emergency act in order to amend the statute. See An Act Relative to Adoption and Promoting the Welfare of Children, H.R. 3965, 1999 Leg., ch. 3, § 6 (Mass. 1999) (codified as MASS. GEN. LAWS ch. 119, § 24 (2000)), available at <http://www.mass.gov/legis/laws/seslaw99/sl990003.htm>. Prior to the amendment, the statute provided "upon the petition of any person." *Id.* The Legislature stated that the purpose of this Act was to accelerate the adoption process in recognition of the best interests of the child. *Id.*

56. MASS. GEN. LAWS ch. 119, § 24 (2000) (referring to ambiguity in statutory language).

57. See *infra* note 58 (citing cases recognizing ability of different agencies to bring care and protection petitions).

58. See generally *Care and Protection of Charles*, 504 N.E.2d 592 (Mass. 1987) (granting standing to school committee to bring care and protection petition); *Custody of a Minor* (No. 1), 434 N.E.2d 601 (Mass.

*Protection of Benjamin*,<sup>59</sup> the Supreme Judicial Court (SJC) allowed the child's father to seek termination of the mother's parental rights even though the DSS was not prosecuting the case.<sup>60</sup> The court stated that anyone able to initiate a proceeding should be allowed to prosecute it, but did not establish any standards for future courts to follow regarding who qualifies as "a person" under the statute.<sup>61</sup> Other states' statutes, such as Florida's, are broader in scope than the Massachusetts version and appear to allow virtually anyone to initiate a petition to terminate parental rights.<sup>62</sup>

## 2. Florida

Florida's broad termination statute allows not only the DSS, but also a GAL or "any" person who knows, or has a reasonable knowledge of the facts, to petition to terminate parental rights.<sup>63</sup> This expansive statutory language suggests that a child, knowing and believing the facts are true, should be able to petition the court to terminate parental rights.<sup>64</sup> This liberal interpretation led to two controversial cases in Florida concerning children attempting to bring termination petitions on their own behalves.<sup>65</sup>

In *Kingsley v. Kinglsey*,<sup>66</sup> the Florida Circuit Court allowed an eleven-year-old boy, Gregory, to bring a petition to terminate his mother's parental rights.<sup>67</sup> The mother contested the court's decision to terminate her rights, stating that the disability of nonage precluded her son from bringing the petition on his own behalf.<sup>68</sup> The District Court of Appeals agreed with the mother and reversed the lower court's decision on the standing issue.<sup>69</sup> The court pointed

1982) (allowing hospital to bring care and protection petition); *Custody of a Minor* (No. 2), 393 N.E.2d 379 (Mass. 1979) (permitting psychiatric social worker standing to bring petition); *Custody of a Minor* (No. 3), 379 N.E.2d 1053 (Mass. 1978) (recognizing standing of child's physician to bring petition).

59. *Care and Protection of Benjamin*, 525 N.E.2d 418, 420 (Mass. 1988) (ruling DSS not necessary to prosecute termination proceeding).

60. *Id.* (permitting father to continue proceedings absent DSS as party).

61. *Id.* (concluding father's right existed without establishing standards for other potential petitioners). The court held that "[w]ithout deciding whether a mere volunteer could properly maintain such a proceeding, we readily conclude that a child's father who was married to the child's mother at the time of the child's birth may do so." *Id.* at 420.

62. *See infra* Part II.B.2 (describing broad language of Florida statute).

63. FLA. STAT. § 39.802 (2003) (describing procedure to terminate parental rights). *See DeBellis & Soja, supra* note 5, at 511 (noting Florida's broad statutory language as compared to other states).

64. *See infra* notes 66-77 and accompanying text (proffering court's analysis of child standing in *Kingsley* and *Mays*).

65. *See infra* notes 66-77 and accompanying text (discussing procedural history of *Kingsley* and *Mays*). *See generally* DeBellis & Soja, *supra* note 5 (outlining court's reasoning and conclusions in *Kingsley* and *Mays*); Cannon, *supra* note 18 (addressing merits of *Kingsley* and *Mays* and their effect on children's rights).

66. 623 So. 2d 780 (Fla. Dist. Ct. App. 1993).

67. *Id.* at 782-83 (listing procedural history).

68. *Id.* at 783 (describing mother's appeal of court ruling).

69. *Kingsley v. Kingsley*, 623 So. 2d 780, 783 (Fla. Dist. Ct. App. 1993) (concluding child did not have standing to bring petition). The court, however, found the trial court's error in allowing the child to have standing harmless because the child's foster parents, his guardian, and the DSS all filed separate termination

out, however, that it could have appointed the child a GAL or “next friend” to bring the case on his behalf and that doing so would only place a slight procedural burden on his right to bring the petition.<sup>70</sup> A case which was decided one day later, however, interpreted the law quite differently.<sup>71</sup>

In *Twigg v. Mays*,<sup>72</sup> a fourteen-year-old girl, Kimberly Mays, brought a petition to terminate the rights of her biological parents, the Twiggs, who sought custody of Kimberly after they learned that she was their biological daughter who had been switched at birth with the Mays’ baby girl.<sup>73</sup> Kimberly wanted to remain with the Mays family who had raised her since birth.<sup>74</sup> The Florida Circuit Court recognized that Kimberly may have had standing to bring a petition because the Florida Constitution extends rights to minors and the courts should be available to everyone needing assistance.<sup>75</sup> The court circumvented the issue, however, and decided the case on different grounds.<sup>76</sup> The theory that the Florida Constitution gave Kimberly the right to sue on her own behalf, however, may be used in future cases.<sup>77</sup> To avoid the conflicting interpretations displayed in the Florida courts, other states have clearer statutes regarding standing to bring termination proceedings.<sup>78</sup>

### 3. Pennsylvania

The Pennsylvania termination statute is very specific as to who can petition to terminate parental rights: parents, an agency, the custodian who has filed proper reports, or an attorney or GAL for a child who the court has declared a

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petitions. *Id.* at 785.

70. *Id.* at 784 (opining alternative to child standing in termination proceedings). The court emphasized that the “next friend” does not become a party to the suit and the child remains the interested petitioner. *Id.*

71. See *infra* notes 72-77 and accompanying text (asserting contradictory reasoning in concurrently decided Florida cases); see also Cannon, *supra* note 18, at 852-54 (highlighting incongruous holdings of *Kingsley* and *Mays* cases).

72. No. 88-4489-CA-01, 1993 WL 330624 (Fla. Cir. Ct. 1993).

73. *Id.* at \*2 (delineating facts and procedural history of case). Robert Mays, who raised Kimberly, also joined the petition to terminate the rights of her biological parents. *Id.* The Twiggs raised the Mays’ biological daughter, Arlena. See *Mays v. Twigg*, 543 So. 2d 241, 242 (Fla. Dist. Ct. App. 1989). Arlena suffered congenital heart failure and shortly before her death, her doctors realized that she was not the Twiggs’ biological child. *Id.*

74. *Twigg v. Mays*, No. 88-4489-CA-01, 1993 WL 330624 at \*2 (Fla. Cir. Ct. 1993) (noting child’s wishes to remain with family who raised her).

75. See *id.* The *Mays* court based its reasoning upon its opinion in *In re T.W.*, where it stated that a child is a “natural person” under the state constitution and that all natural persons are guaranteed access to the courts for reparation of an injury. *Twigg v. Mays*, No. 88-4489-CA-01, 1993 WL 330624 at \*2 (Fla. Cir. Ct. 1993); see also *In re T.W.*, 551 So. 2d 1186, 1193-94 (Fla. 1989) (finding parent and state interests do not override minor’s interest in ending unwanted pregnancy). Compare FLA. CONST. art. I, § 21 (noting courts open to every person), with MASS. CONST. pt. 1, art. XI (addressing right of all people to seek redress of injury in state courts).

76. *Mays*, 1993 WL 330624 at \*6 (concluding standing issue moot).

77. See Cannon, *supra* note 18, at 854 (suggesting child standing issue left open because of *Mays* case).

78. See *infra* Part II.B.3 (presenting clearly defined Pennsylvania statute).

dependent of the state.<sup>79</sup> In *In re Adoption of J.L.*,<sup>80</sup> the Superior Court of Pennsylvania held that a child could not bring a petition to terminate parental rights unless the court previously had declared the child a dependent of the state.<sup>81</sup> If the court found the child dependent, then an attorney or GAL could bring the petition on the child's behalf.<sup>82</sup> Thus, unlike the Florida statute, the Pennsylvania statute leaves little room for interpretation as to who may initiate termination proceedings.<sup>83</sup>

#### 4. Overall Goals of Statutes

Whether the state statute is vague or specific regarding who can petition the courts to terminate parental rights, the process is often long and difficult.<sup>84</sup> Courts better serve children in precarious living situations with their biological or foster families, by handling termination proceedings and appeals in an expeditious manner.<sup>85</sup> When standing issues prevent prompt prosecution to terminate parental rights, there may be alternatives for children in need of a stable environment.<sup>86</sup>

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79. 23 PA. STAT. ANN. § 2512(a) (West 2001) (listing eligible persons able to petition for involuntary termination of parental rights).

80. 769 A.2d 1182 (Pa. Super. Ct. 2001).

81. *Id.* at 1184 (recognizing statutory requirement of dependency prior to filing petition on behalf of child). This case resulted from an appeal by J.L.'s attorney when the court denied a petition to terminate parental rights. *Id.* at 1183. Although the court stated the child did not have standing to initiate termination proceedings, it held that the child does have standing to appeal the court's decision. *Id.* at 1185. Pennsylvania law requires the court to appoint attorneys to children in termination proceedings contested by either or both parents. 23 PA. STAT. tit. § 2313(a) (West 2001). The court in *J.L.* reasoned that this part of the statute is worthless if the attorney cannot appeal on behalf of the child when the attorney or the child believes the court is wrong. *J.L.*, 769 A.2d at 1185.

82. 23 PA. STAT. ANN. § 2512(a)(4) (West 2001) (requiring adjudication of dependency before attorney or guardian may initiate petition).

83. See *J.L.*, 769 A.2d at 1185 (denying child's uncle and friend standing to appeal court decision refusing termination of father's rights); *In re Adoption of J.D.S.*, 763 A.2d 867, 869 (Pa. Super. Ct. 2000) (rejecting standing for step-father who no longer lived with child or child's mother). The court in *J.D.S.* suggests that a step-father who lives with and is devoted to the child may have standing. *J.D.S.*, 763 A.2d at 869; see also *In re Adoption of W.C.K.*, 748 A.2d 223, 233 (Pa. Super. Ct. 2000) (declining standing for custodian who did not comply with reporting requirements); DeBellis & Soja, *supra* note 5, at 510 (pointing to conciseness of Pennsylvania statute).

84. See Martha Pierce, *Making Appeals More Child Friendly*, 17-Apr UTAH B.J. 20, 20-21 (2004) (detailing plight of child waiting for termination proceedings to conclude).

85. *Id.* at 21 (noting Utah's progress in improving termination proceedings). To improve the system, the author suggests that courts should shorten the time a parent has to appeal a ruling, ameliorate case management, and expedite paper work. *Id.*

86. See *infra* Part II.C (describing alternatives to child standing problem).

### C. Alternatives

#### 1. Independent Representation of Child

Representing a child in a legal proceeding creates conflicting ethical responsibilities for an attorney when the child's concerns differ from what an objective adult would believe to be in the child's best interest.<sup>87</sup> To remedy this conflict, some courts appoint the child a GAL and/or his or her own attorney.<sup>88</sup> The attorney advocates the child's position.<sup>89</sup> The GAL performs an independent investigation to determine what is in the child's best interest.<sup>90</sup> This practice enables the court to balance the essential needs and the personal wishes of the child in maintaining or severing his or her parental relationship.<sup>91</sup>

The court usually appoints the child a GAL, although it may also appoint a separate attorney when it is clear that the GAL's opinion conflicts or will conflict with the child's wishes.<sup>92</sup> If the child contests the state's attempt to terminate parental rights, neither the DSS attorney nor the state appointed GAL will be able to zealously advocate the child's wishes.<sup>93</sup> This conflict of interest becomes more pronounced when the child seeks termination of parental rights and the DSS cannot or will not get involved.<sup>94</sup> A child without representation has little recourse to seek assistance from the courts.<sup>95</sup>

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87. See Blinn, *supra* note 49, at 823 (outlining conflicting interests of child, parent and state). The state's attorney represents the state, not the child, and will not always advocate the child's wishes. *Id.* at 824. Also, the parent's attorney will not always be suited to represent the child, because parental rights are well-protected by the Constitution and the attorney is bound to act solely in the parent's interest. *Id.* at 824-25.

88. See Jennifer Bellah, *Appointing Counsel for the Child in Actions to Terminate Parental Rights*, 70 CAL. L. REV. 481, 490 (1982) (acknowledging California law allows courts to appoint lawyers and GALs); Mary E. Hazlewood, *The New Texas Ad Litem Statute: Is it Really Protecting the Best Interests of Minor Children?*, 35 ST. MARY'S L.J. 1035, 1036-38 (2004) (detailing different approaches used for child representation).

89. See Bellah, *supra* note 88, at 495-97 (explaining conflict arising out of opposing interests of child and state or parent); Marcia M. Boumil, *Ethical Issues in Guardian Ad Litem Practice*, 86 MASS. L. REV. 8, 12 (2001) (distinguishing role of attorney and GAL when child can express own wishes).

90. See Boumil, *supra* note 89, at 12 (explaining role of GAL).

91. See Boumil, *supra* note 89, at 12 (emphasizing need for representation of child's wishes and his/her objective best interests in certain circumstances).

92. See Boumil, *supra* note 89, at 12 (illustrating situations where one person may serve as both attorney and GAL).

93. See John E.B. Meyers, *Session 3: Children's Rights in the Context of Welfare, Dependency, and the Juvenile Court*, 8 U.C. DAVIS J. JUV. L. & POL'Y 267, 269-70 (2004) (reviewing perspectives on appropriateness of appointing attorneys to children in dependency proceedings). Neither the judge, the attorney for the DSS, nor the parents' attorney can adequately protect the child's rights. *Id.* If the state and parents have attorneys to protect their interests, so should the child. *Id.* at 270.

94. See Blinn, *supra* note 49, at 810 (stressing powerlessness of children when denied their own rights); Cannon, *supra* note 18, at 849 (articulating frustrations with DSS and inevitable injury to children seeking homes); see also *supra* notes 4-8 and accompanying text (discussing Patrick Holland's inability to initiate termination proceeding without DSS participation).

95. See Cannon, *supra* note 18, at 849 (emphasizing failure of DSS to handle Gregory's case appropriately).

While the DSS usually initiates petitions to terminate parental rights, it is possible in some states for an attorney or GAL to commence a petition.<sup>96</sup> In these circumstances, a third party brings the petition on behalf of the child, and the child remains the central party to the action.<sup>97</sup> When the DSS is unwilling or unable to bring a petition to terminate parental rights, the appointment of a separate attorney or GAL gives the child another option to receive relief from the court.<sup>98</sup> Alternatively, some states appoint GALs or attorneys to assist older children emancipate from their parents, effectively terminating any legal relationship between parent and offspring.<sup>99</sup>

## 2. *Emancipation*

Legal emancipation typically occurs when a child reaches eighteen.<sup>100</sup> At common law, children were dependants of their parents until they reached the age of majority, unless a specific event occurred that triggered early emancipation.<sup>101</sup> Unlike a petition to terminate parental rights, which is usually brought by the state, children may seek emancipation with or without the consent of their parents, for a variety of reasons.<sup>102</sup> Courts decide whether a child is emancipated on a case-by-case basis, often resulting in disjointed and conflicting precedent.<sup>103</sup> Some jurisdictions, however, have codified the common law in emancipation statutes, defining the necessary conditions for terminating the legal relationship between child and parent.<sup>104</sup>

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96. See FLA. STAT. § 39.802 (2003) (allowing GAL or any other person with knowledge to bring termination petition); 23 PA. STAT. ANN. § 2512(a) (West 2001) (allowing attorney or GAL to bring petition if child adjudicated dependant); *Kingsley v. Kingsley*, 623 So. 2d 780, 784 (Fla. Dist. Ct. App. 1993) (setting forth procedure in which GAL initiates petition on behalf of child).

97. *Kingsley*, 623 So. 2d at 784 (noting child remains real party to action).

98. See *supra* note 96 and accompanying text (detailing statutes allowing attorney or GAL to bring case on behalf of child).

99. See *infra* notes 100-109 and accompanying text (finding emancipation statutes available to minors to help terminate parental rights).

100. See Christine M. Hanisco, Note, *Acknowledging the Hypocrisy: Granting Minors the Right to Choose Their Medical Treatment*, 16 N.Y.L. SCH. J. HUM. RTS. 899, 899-901 (2000) (summarizing history of common law and statutory emancipation).

101. See *id.* (detailing criteria for reaching emancipation); see also *Gimlett v. Gimlett*, 629 P.2d 450, 452 (Wash. 1981) (listing factual situations under which emancipation can occur). These situations include marriage or financial independence of the minor. *Gimlett*, 629 P.2d at 452. See generally *Commonwealth v. Graham*, 31 N.E. 706 (Mass. 1892) (addressing emancipation of minor by marriage); *Abbott v. Converse*, 86 Mass. 530 (1862) (reviewing viability of emancipation by parole agreement between father and daughter).

102. See Hanisco, *supra* note 100, at 906-08 (discussing emancipation process).

103. See MASS. GEN. LAWS ch. 208, § 28 (2000) (permitting support payments beyond age of majority under certain circumstances); *Eccleston v. Bankosky*, 780 N.E.2d 1266, 1274 (Mass. 2003) (expressing need for analysis when determining legal status of minors). The DSS removed Cailyn from the custody of her biological parents at the age of eleven and placed her with a guardian. *Eccleston*, 780 N.E.2d at 1269. The court concluded that emancipation does not necessarily occur at a certain age and ordered Cailyn's father to pay support to her guardian after Cailyn turned eighteen. *Id.* at 1273-74; see also *Gimlett*, 629 P.2d at 451-52 (distinguishing emancipation by age from emancipation through factual circumstances).

104. See, e.g., CAL. FAM. CODE § 7120 (2004) (describing petitions for declaration of emancipation); FLA.

All states that have emancipation statutes allow children who meet certain criteria to petition the courts to end the legal relationship with their parents.<sup>105</sup> To qualify, a child typically must be between fourteen and sixteen years old and must show proof of economic independence.<sup>106</sup> The child must also convince the court that emancipation is in his or her best interest.<sup>107</sup> If the court agrees, the child acquires all the legal rights and liabilities of an adult: the right to contract, the right to make medical decisions, the right to sue and be sued, and the right to be free of parental control and support.<sup>108</sup> While satisfying the emancipation criteria is difficult and is only available to older children, it does provide another option for minors to exercise control over and make decisions regarding their relationship with their parents.<sup>109</sup> Society is hesitant to furnish children with too much control over these types of choices, however, and courts are generally extremely careful when allowing children to make such momentous decisions.<sup>110</sup>

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STAT. § 743.015 (2004) (allowing minor sixteen or older to emancipate for any purpose); FLA. STAT. § 743.08 (2004) (allowing minor to emancipate to enter into artistic or sports contract); *see also* Hanisco, *supra* note 100, at 906-08 (summarizing common law and statutory emancipation procedures).

105. *See* John C. Polifka, *The Status of Emancipated Minors in Iowa: The Case for a Clearly Drafted Statute*, 44 DRAKE L. REV. 39, 45-48 (1995) (discussing merits of emancipation statute to avoid ambiguous case law); *Legislative Initiatives for Healthier Lives: Executive Summary*, NORTHEASTERN U. SCH. L., Apr. 9, 2002 (hereinafter Executive Summary) (highlighting need for statutory emancipation in Massachusetts), at [http://www.bostoncoop.net/lcd/summary/executive\\_summary.pdf](http://www.bostoncoop.net/lcd/summary/executive_summary.pdf); *Legislative Initiatives for Healthier Lives: Mature Minor Rule, Recommendations and Solutions*, NORTHEASTERN U. SCH. L., Apr. 9, 2002 (proffering suggestions for judicial standards for emancipation based on comparison of other states' emancipation statutes), at <http://www.bostoncoop.net/lcd/index.html>. This study, performed by Northeastern University Law School students and faculty in 2001-02, focused on the need for a Massachusetts emancipation statute to procure more rights for runaway and homeless children. *Executive Summary* at 1. An emancipation statute would allow those destitute children to receive state services without hindrance because of their minority status. *Id.* The Executive Summary outlines three reasons why courts are unwilling to allow emancipation petitions: lack of formal guidelines, terminating support obligations of parents, and lack of maturity of minors to care for themselves. *Id.* at 2. The Executive Summary further suggests that the state can alleviate these concerns by enacting an emancipation statute that allows judges to order separate support. *Id.*

106. *See* Polifka, *supra* note 105, at 45 (detailing requirements minor must prove when seeking emancipation in California); *see also supra* note 104 (referring to specific emancipation statutes).

107. *See* Polifka, *supra* note 105, at 45 (noting requirement of proof that emancipation is in child's best interest).

108. *See* CAL. FAM. CODE § 7050 (2004) (listing purposes for which emancipated minors are considered adults).

109. *See* Tia Wallach, *Statutory Emancipation in California: Privilege or Poverty?*, 11 J. CONTEMP. LEGAL ISSUES 669, 672 (1999) (proposing clearly drafted emancipation statutes to give minors other option without ability to abuse procedure). *But see* Matthew Bennett, *Methods of Emancipation: Today's Children, Yesterday's Slaves*, 11 J. CONTEMP. LEGAL ISSUES 632, 635 (1997) (comparing child emancipation statutes to antebellum statutes emancipating slaves from masters). The similarity between these statutes suggests that our legal system treats children as property rather than as people. *Id.* Studies have found that some parents abuse the statutes by coercing their children to consent to emancipation in order to relieve themselves of support obligations. *See* Nehring, *supra* note 24, at 801. Nehring proposes "partial emancipation," whereby the parent must make support payments to the child even though all other legal rights and duties are severed. *Id.* at 805-06.

110. *See infra* notes 111-120 and accompanying text (explaining public policy ultimately constrains expansion of children's rights); *see also* DeBellis & Soja, *supra* note 5, at 529-30 (emphasizing seriousness of

#### D. Policy Concerns

Despite their capability to be independent, children are vulnerable, need care and do not always know what is in their best interest.<sup>111</sup> For these reasons and the reasons addressed in Part II.A of this Note, limitations exist on the types of decisions children can make.<sup>112</sup> There are also other cultural and public policy rationales for limiting children's access to legal decision making.<sup>113</sup> Professor Barbara Bennett Woodhouse suggests that conservatives are reluctant to give children more rights because of the potential destruction of the traditional family structure.<sup>114</sup> On the other hand, Professor Woodhouse proposes that liberals are concerned with enhanced children's rights extending to unborn children, thereby jeopardizing women's reproductive rights.<sup>115</sup> These concerns shift the focus from the child's predicament and relationship needs towards exaggerated scenarios where parents believe their rights to care and control of their children are at risk.<sup>116</sup>

Taking the focus away from the child's rights leads to unsupported fears which hinder progression and understanding of the child's needs.<sup>117</sup> For example, characterizing termination proceedings as "divorces" creates the concern that children will turn to the court system whenever their parents discipline them.<sup>118</sup> State legislatures and the courts can ease such concerns by

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terminating parental rights).

111. See Hafen & Hafen, *supra* note 22, at 476 (declaring need to restrict children's rights until they develop "capacity for autonomous action"); see also *supra* note 23 and accompanying text (describing children's need for care).

112. See Hafen & Hafen, *supra* note 22, at 476 (noting need for limiting children's rights); *supra* Part II.A.1 (focusing on justifications for limiting children's rights).

113. See Ezer, *supra* note 32, at 11 (portraying Supreme Court's federalism concern in interfering with state court family law issues). State courts handle matters of family law, including issues concerning children's rights. *Id.* Federal courts do not like to involve themselves in private family matters. *Id.*; see also Meyer, *supra* note 12, at 1121-31 (suggesting unwillingness to recognize children's rights results from fear of unbridled democracy). Meyer suggests three reasons why children are denied certain constitutional rights. Meyer, *supra* note 12, at 1121. First, the Constitution does not propound children's rights even though the Supreme Court can create new rights and may recognize independence rights of children. *Id.* at 1121-24. Second, giving children more rights disrupts traditional notions of family because it places a burden on parental autonomy. *Id.* at 1124-25. Finally, creating more rights may create more confusion than they are worth. *Id.* at 1127. Granting children more rights will not eradicate problems such as where to set boundaries and what to do when familial and state interests clash. *Id.*

114. See Woodhouse, *supra* note 27, at 2 (noting conservatives' concerns).

115. See Woodhouse, *supra* note 27, at 2 (commenting on liberal perspectives).

116. See Nehring, *supra* note 24, at 803 (noting radical measures to terminate parent-child relationship only used in extreme cases). Courts may employ less drastic measures to partially sever legal ties between parent and child by ordering partial emancipation or emancipation with a continued right to support. *Id.* at 805-08. In severe cases of irretrievable breakdown of the parent-child relationship, though the parties may separate, the parent must still provide support for the child. *Id.*

117. See Cannon, *supra* note 18, at 848 (discrediting adults' fear of children abusing privileges if given too much freedom). For example, the media's attention to the standing issue in *Kingsley* diverted attention away from Gregory's difficult family situation. *Id.*

118. Cannon, *supra* note 18, at 848 (noting unfounded and exaggerated fears of parents). The likelihood of children rushing to court to sue their parents is very low. *Id.* But see Associated Press, *Twins Seek "Divorce"*

establishing procedural safeguards to ensure certain remedies are available to children only in the most dire of circumstances.<sup>119</sup> Concentrating on the child's situation and needs apart from the burden placed on the privileges of parenthood may assist lawmakers in designing procedural remedies that are available for children.<sup>120</sup>

### III. ANALYSIS

When terminating parental rights, the state must overcome a high standard of proof before the court will sever the parent-child relationship.<sup>121</sup> While the law scrupulously protects the procedural and substantive rights of parents, the importance of children's rights in such proceedings remains unclear.<sup>122</sup> Attorneys for the state or for the parents may adequately represent children when the children's interests are in accord with the states or the parents' interests.<sup>123</sup> When children have neither party on their side, the law cannot simply ignore them, especially when they face potentially serious or irreparable injury.<sup>124</sup> In extreme circumstances, courts should, at a minimum, allow

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from *Father*, BOSTON HERALD, Aug. 4, 2004 (detailing teens' attempt to end ties with father), available at <http://news.bostonherald.com/localRegional/view.bg?articleid=38541&format=text>. The teens argued that Patrick's case gave them precedent to bring their action. *Id.*

119. Cannon, *supra* note 18, at 847. Minimal procedural safeguards, such as appointing the child a guardian, balance the interests of the child with the interests of parents and society by assuring that minors are competent to make serious decisions. *Id.* Cannon also notes that courts have explicitly ruled out the possibility that a child may divorce his or her parents and that parents will never face a no-fault termination of their parental rights. *Id.* at 853-54.

120. See Meyer, *supra* note 12, at 1133 (acknowledging benefits resulting from certain constitutional rights for children). Constitutionalizing certain children's rights would provide children with a remedy when the government fails to bring an action on their behalf. *Id.* Doing so may also result in court decisions prioritizing children's interests over those of the parents. *Id.* In Woodhouse's article, the author compares the United States Constitution with the new South African Constitution, which includes rights of children in its Bill of Rights. See Woodhouse, *supra* note 27, at 7. The South African Constitution guarantees children the right to "family or parental care, or to the appropriate alternative care when removed from the family environment," and "security, basic nutrition and basic health and social services." *Id.* at 39. Woodhouse suggests that under the South African Constitution, Joshua DeShaney would have had a constitutional claim against the state for denying him his right to security and adequate care. *Id.* at 48-49. Under the South African Constitution, Patrick Holland may have had a right to sue his father, since the law would acknowledge his right to a family. See *supra* note 4 (discussing barriers Patrick faces in ending legal relationship with his father).

121. See *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982) (establishing clear and convincing standard); O'Brien, *supra* note 27, at 1220-24 (introducing brief explanation of standard of proof used in termination hearings).

122. See *supra* notes 48-49 (recognizing best interests of child not enough to terminate parental rights). Compare O'Brien, *supra* note 27, at 1220-24 (discussing rights of parents in termination proceedings), with Woodhouse, *supra* note 27, at 9 (portraying lack of rights possessed by children).

123. See *supra* note 87-88 and accompanying text (reviewing circumstances when appropriate to appoint GAL and/or attorney for child); see also Bellah, *supra* note 88, at 490 (pointing to California law addressing appointment of GALs and attorneys).

124. See *supra* notes 44-47 and accompanying text (expounding upon situations where refusing certain rights may cause severe injury to child); *supra* note 93 and accompanying text (stating independent representation for child necessary when child's opinion differs from state and parents).

children the opportunity to argue their position.<sup>125</sup> Employing procedural safeguards and maintaining the clear and convincing standard necessary for terminating parental rights will prevent abuse of the system.<sup>126</sup>

The Massachusetts Legislature should enact a statute that clearly defines who may bring a care and protection petition.<sup>127</sup> The current statute, authorizing “a person” to bring a care and protection petition, is too vague and the applicable case law provides little specificity as to who may petition and prosecute a termination of parental rights case.<sup>128</sup> Although the legislature amended the statute in 1999, changing the language from “any person” to “a person,” for the stated purpose of expediting the adoption process, it is unclear how this exchange of words furthered this goal.<sup>129</sup> The statute should specifically delineate who may bring a petition so that determining standing does not elongate the termination process and instead, accelerates children’s availability for adoption.<sup>130</sup>

Like Florida and Pennsylvania, the Massachusetts care and protection statute should specifically identify the parties capable of filing requests for termination of parental rights.<sup>131</sup> The legislature should consider the dicta in *Mays* regarding Kimberly’s standing to bring a petition on her own behalf, and recognize that the Massachusetts Constitution, like Florida’s, affords “every subject of the Commonwealth” the right to seek protection and reparation from the courts.<sup>132</sup> While the statute need not allow children to bring petitions directly in their own name, it should allow other parties besides the DSS to initiate and prosecute these petitions.<sup>133</sup>

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125. See Bellah, *supra* note 88, at 490 (stressing importance of appointing child separate counsel); *supra* note 96 and accompanying text (noting child remains party to action even if brought by attorney or GAL). The author argues that children should be appointed separate counsel whenever they so request in order to ensure their rights are represented in the termination process. Bellah, *supra* note 88, at 507. Children need a loyal representative and may be more accepting of the result of the termination hearing if they feel they had an adequate voice in the proceedings and were dutifully represented. *Id.* at 507; see also Cannon, *supra* note 18, at 849 (promoting notion of children bringing own claims in extreme circumstances).

126. See *supra* notes 117-118 (emphasizing requirement of egregious circumstances before court will terminate parental rights). Courts can grant children rights in termination proceedings without implying that children have the right to “divorce” their parents. See Cannon, *supra* note 18, at 853, 855.

127. See *supra* note 55 and accompanying text (outlining ambiguity in Massachusetts statute).

128. See *supra* notes 58-59 and accompanying text (summarizing various court decisions interpreting Massachusetts care and protection statute).

129. See An Act Relative to Adoption and Promoting the Welfare of Children, H.R. 3965, 1999 Leg., ch. 3, § 6 (Mass. 1999) (codified as MASS. GEN. LAWS ch. 119, § 24 (2000)), available at <http://www.mass.gov/legis/laws/seslaw99/sl990003.htm> (highlighting changes in statutory language from “any person” to “a person”).

130. See *supra* notes 79-81 and accompanying text (discussing Pennsylvania’s clearly drafted statute).

131. See *supra* notes 63, 79 and accompanying text (referring to standing requirements under Florida and Pennsylvania statutes); see also FLA. STAT. § 39.802 (2004); 23 PA. STAT. ANN. § 2512(a) (West 2001).

132. See *supra* note 75 and accompanying text (comparing Massachusetts and Florida Constitutions prescribing access to courts).

133. See *supra* notes 63, 79 and accompanying text (exploring Florida and Pennsylvania statutes regarding standing to bring petitions to terminate parental rights).

Although the Florida statute may be too broad and open to interpretation, the Pennsylvania statute offers a permissive yet clear demarcation of the parties who are eligible to bring termination proceedings.<sup>134</sup> The Pennsylvania statute permits a wide spectrum of interested parties to bring petitions, ensuring that the DSS does not have the only authority to determine when it is appropriate to bring such cases.<sup>135</sup> Furthermore, the Pennsylvania statute has built-in procedural safeguards to prevent frivolous proceedings by not allowing children to bring suits directly and by only allowing an attorney or GAL to bring a petition for a child after the court declares a child to be a dependant of the state.<sup>136</sup> Under the Pennsylvania statute, Patrick Holland would not have had to wait for the DSS to terminate his father's parental rights.<sup>137</sup>

The Massachusetts care and protection statute should, at a minimum, allow attorneys or GALs to bring petitions for children the court determines are in need of care and protection, especially when the state, the parents, and the child do not agree on an outcome.<sup>138</sup> While appointing the child independent representation to bring a petition places only a slight burden on the child's right to be heard, it allows the child to remain a party to the action.<sup>139</sup> Allowing children, through their attorneys or GALs, to bring termination petitions does not infringe on parental rights because the court will apply the same high standard of proof before terminating any rights.<sup>140</sup> Conversely, by not allowing children to bring petitions through attorneys or GALs, some children, like Patrick Holland and Joshua DeShaney, are left without recourse.<sup>141</sup>

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134. See *supra* notes 79-83 and accompanying text (examining merits of Pennsylvania's statute).

135. See *supra* note 79 (listing parties eligible to bring petitions). Besides the DSS, Pennsylvania allows a parent, a custodian, or an attorney or GAL for the dependant child to bring a petition. *Id.*

136. See *supra* note 79 (indicating parties able to bring petition); see also *supra* note 83 (stating GALs or attorneys can only bring petition for child after child declared dependent).

137. See 23 PA. STAT. ANN. § 2512(a) (West 2001) (defining persons eligible to bring petitions). Patrick Holland probably would have been considered dependant under Pennsylvania law, considering his mother was dead and his father was incarcerated for life. *Id.* Therefore, standing issues could have been eliminated had his attorney or a GAL brought the termination proceeding on Patrick's behalf. See *supra* note 6 and accompanying text (explaining procedural roadblocks hindering Patrick's attempts to terminate his father's rights).

138. See *supra* notes 93-94 and accompanying text (describing child's need for independent representation when interests differ from state and parents); *supra* notes 80-82 and accompanying text (demonstrating Pennsylvania's procedural safeguard allowing dependant children to bring petition through third party).

139. See *supra* note 69-70 (noting disability of nonage overcome by appointing attorney or GAL for child). The court in *Kingsley* noted that the appointment of an attorney or GAL only places a slight procedural burden on the child's right to be heard. *Kingsley v. Kingsley*, 623 So. 2d 780, 784-85 (Fla. Dist. Ct. App. 1993); see also *supra* note 96 and accompanying text (pointing to Florida and Pennsylvania statutes permitting petitions by attorneys or GALs).

140. See *supra* note 27 and accompanying text (establishing high standard courts employ before terminating parental rights). *Santosky* requires that the state prove by clear and convincing evidence that the parents' rights should be terminated, regardless of who brings the petition. See *Santosky v. Kramer*, 455 U.S. 745, 770 (1982).

141. See *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 192-93 (1989) (detailing child's suffering at hands of father); *supra* note 4 (portraying Patrick's plight resulting from inability to terminate parental relationship). While in most cases the DSS or another agency will institute the petition,

In order to provide children with more choice rights, Massachusetts should enact an emancipation statute.<sup>142</sup> Much of the case law in Massachusetts regarding emancipation concerns extending emancipation beyond the age of majority, usually for support reasons.<sup>143</sup> For example, the Massachusetts child support statute authorizes support beyond the age of majority when the child is involved in secondary education and still lives in the parental home.<sup>144</sup> Nevertheless, many of the same factors apply when the child seeks early emancipation: maturity levels, economic independence and the best interests of the minor.<sup>145</sup> Codifying the standards by which the court can measure the age of emancipation will result in more uniform decisions and the use of emancipation may be limited to the few situations when the minor meets the requisite criteria.<sup>146</sup>

Another apprehension plaguing the legislature in enacting an emancipation statute is that emancipation ends the parents' duty to support the child.<sup>147</sup> This concern is perpetuated by the fact that emancipation requires financial independence and is therefore not a viable option for many children.<sup>148</sup> To allay both of these concerns, some statutes require the parents, like spouses in divorce cases, to continue paying support for the emancipated child.<sup>149</sup> Under these statutes, all control rights are terminated, yet the child may live

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there will be circumstances where no other adult party has standing. DeBellis & Soja, *supra* note 5, at 509-10.

142. See *Executive Summary*, *supra* note 105 and accompanying text (advocating legislation to create emancipation statute in Massachusetts). The Executive Summary promotes an emancipation statute in Massachusetts because of the problems homeless and runaway children encounter accessing shelter and medical services once they leave the parental home. See *Executive Summary*, *supra* note 105, at 3-5.

143. See *supra* notes 100-101 and accompanying text (expounding common law emancipation in Massachusetts); *Eccleston v. Bankosky*, 780 N.E.2d 1266, 1273-74 (Mass. 2004) (ordering post-minority support from biological parents to guardian). Although the statute did not allow such an order, the probate court could employ its equity powers and order the biological father to pay support to a third party for support of his daughter Cailyn who was beyond the age of majority. *Eccleston*, 780 N.E.2d at 1275. The court justified the order by noting that Cailyn's parents neglectfully denied her a proper home to live in, Cailyn's father was able to provide continued support, and Cailyn's continuing to live with Eccleston was in her best interest. *Id.*

144. See MASS. GEN. LAWS ch. 208, § 28 (2000) (permitting post-minority support orders for child under certain circumstances). To order child support beyond the age of eighteen, the child must be under the age of twenty-three, living in the parental home, and financially dependant on a parent because of enrollment in an educational program. *Id.*

145. See Polifka, *supra* note 105, at 45 (listing factors child must prove before court will order legal emancipation). Compare FLA. STAT. § 743.015 (2004) (listing criteria for statutory emancipation), with *Eccleston*, 780 N.E.2d at 1275 (citing reasons for extending support beyond age of majority).

146. See Polifka, *supra* note 105, at 45-48 (proposing emancipation statute in Iowa to clarify status of law); see also *supra* note 109 (considering need for proper safeguards to avoid negative effects of emancipation statutes).

147. See *supra* note 109 (setting forth negative effects of emancipation statutes).

148. See *supra* note 109 (affirming disadvantage of emancipation statutes for minors who cannot support themselves).

149. See *Executive Summary*, *supra* note 105, at 1-2 (advocating for Massachusetts emancipation statute). The Executive Summary proposed that the legislature enact a statute modeled after Michigan's statute, which specifically provides for continued support after emancipation. *Id.* at 1; see also *supra* note 109 (acknowledging need for "partial emancipation" in some circumstances).

sufficiently on his or her own.<sup>150</sup>

The state may face resistance to expanding children's rights by giving them the opportunity to petition to terminate parental rights through an attorney or GAL or by creating statutory emancipation.<sup>151</sup> The state must emphasize the need to protect children in extreme circumstances so that the focus of the legislation does not succumb to the fears of burdening parents' rights.<sup>152</sup> Likewise, the media should stop portraying cases such as Patrick's as "child divorces".<sup>153</sup> This characterization denotes to the public that terminating parental rights is analogous to procuring a divorce from a spouse, which in most states, does not require fault grounds.<sup>154</sup> The public needs to understand that there is no such thing as "no-fault" termination of parental rights.<sup>155</sup> Whether the state or another party on behalf of a child brings a termination proceeding, the party must still prove by clear and convincing evidence that the parents no longer deserve to have custody, care and control of their child.<sup>156</sup>

#### IV. CONCLUSION

Although Patrick's case involved a rare set of facts, the larger issues regarding his ability to participate in legal proceedings are quite common. Patrick's age disabled him from filing a petition in his own name. If the DSS had not stepped in to terminate his father's rights, Patrick may have waited years to end the legal relationship with his father. Presently, the law restricts children's rights to participate in legal proceedings as a result of historical and social perspectives on their limited capability to care for themselves and the notion that parents will act in their best interests. These presumptions allow courts to justify placing parental rights first, even when the child's safety and wellness are at stake. The legal perspective on children's rights is evolving, however, and this momentum may spawn further changes that will ensure children receive a fair chance to vindicate their claims despite their age.

Statutes dealing with standing to bring petitions to terminate parental rights

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150. See *supra* note 109 (describing merits of continued parental support post-emancipation).

151. See *supra* Part II.D (discussing policy concerns in affording children certain choice rights).

152. See *supra* note 12 and accompanying text (summarizing results of shifting focus away from the needs of child).

153. See *supra* notes 117-118 and accompanying text (noting negative public perception when cases labeled "child divorces").

154. See Cannon, *supra* note 18, at 854 (emphasizing termination of parental rights can only occur for cause); see also *supra* note 117 and accompanying text (discussing unsubstantiated fear of children abusing system). Above all, there is an assumption that the parent will act in the child's best interest. See Cannon, *supra* note 18, at 854. The court may only step in when the parent does something to contravene that presumption. *Id.*

155. See *supra* notes 117-119 and accompanying text (allaying unfounded concerns of reckless use of termination statutes by children); see also Nehring, *supra* note 24, at 803 (clarifying situations when courts should allow children to enforce rights against parents).

156. See *supra* note 18 (alleviating concerns over increasing children's rights at expense of parental rights); see also Meyer, *supra* note 12, at 1133 (admitting benefits of allowing children certain rights).

vary considerably from state to state. While Florida's statute is very broad and open for interpretation, Pennsylvania's statute is permissive, yet concise as to who may initiate termination proceedings. The Massachusetts Legislature should use the Pennsylvania statute as a model for its own care and protection statute. The legislature should explicitly permit attorneys and/or GALs to bring petitions on behalf of children who have been adjudicated in need of care and protection. Clarifying the statute and permitting representatives to bring petitions on behalf of children will expedite custody and adoption proceedings. If neither the child nor a suitable representative is able to file a petition to terminate parental rights, statutory emancipation should be an option. Massachusetts should enact an emancipation statute with clearly defined requirements and limitations so the courts may implement the procedure efficiently with little risk of abuse.

Finally, society as well as the judicial system must recognize that children need access to certain rights when they face serious or irreparable injury. In these extreme situations, courts can afford children the right to present their case, while still protecting the rights of their parents. Inflated fears resulting from mischaracterizations of termination proceedings not only distort reality, but they also impede the development of children's rights jurisprudence.

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