

**Proposed Substitute
Bill No. 283**

LCO No. 2922

AN ACT EXTENDING THE AGE OF ELIGIBILITY FOR LEGAL REPRESENTATION OF A CHILD IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2020*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other
5 persons accused by a competent witness of abusing the child, to be
6 examined by one or more competent physicians, psychiatrists or
7 psychologists appointed by the court;

8 (2) (A) A child shall be represented by counsel knowledgeable about
9 representing such children who shall be assigned to represent the child
10 by the office of Chief Public Defender, or appointed by the court if there
11 is an immediate need for the appointment of counsel during a court
12 proceeding. If the child's parent or guardian has been accused by a
13 competent witness of abusing the child, or of causing the child to be
14 neglected or uncared for, upon the assignment or appointment of
15 counsel, such counsel shall be granted immediate access to (i) records
16 relating to the child, including, but not limited to, Department of Social
17 Services records and medical, mental health and substance abuse
18 treatment, law enforcement and educational records, without the

19 necessity of securing further releases, and (ii) the child, for the purpose
20 of consulting with the child privately. The court shall give the parties
21 prior notice of such assignment or appointment. Counsel for the child
22 shall act solely as attorney for the child.

23 (B) If a child requiring assignment of counsel in a proceeding under
24 section 46b-129 is represented by an attorney for a minor child in an
25 ongoing probate or family matter proceeding, the court may appoint the
26 attorney to represent the child in the proceeding under section 46b-129,
27 provided (i) such counsel is knowledgeable about representing such
28 children, and (ii) the court notifies the office of Chief Public Defender of
29 the appointment. Any child who is subject to an ongoing probate or
30 family matters proceeding who has been appointed a guardian ad litem
31 in such proceeding shall be assigned a separate guardian ad litem in a
32 proceeding under section 46b-129 if it is deemed necessary pursuant to
33 subparagraph (D) of this subdivision.

34 (C) The primary role of any counsel for the child shall be to advocate
35 for the child in accordance with the Rules of Professional Conduct,
36 except that if the child is incapable of expressing the child's wishes to
37 the child's counsel because of age or other incapacity, the counsel for the
38 child shall advocate for the best interests of the child.

39 (D) If the court, based on evidence before it, or counsel for the child,
40 determines that the child cannot adequately act in his or her own best
41 interests and the child's wishes, as determined by counsel, if followed,
42 could lead to substantial physical, financial or other harm to the child
43 unless protective action is taken, counsel may request and the court may
44 order that a separate guardian ad litem be assigned for the child, in
45 which case the court shall either appoint a guardian ad litem to serve on
46 a voluntary basis or notify the office of Chief Public Defender who shall
47 assign a separate guardian ad litem for the child. The guardian ad litem
48 shall perform an independent investigation of the case and may present
49 at any hearing information pertinent to the court's determination of the
50 best interests of the child. The guardian ad litem shall be subject to cross-

51 examination upon the request of opposing counsel. The guardian ad
52 litem is not required to be an attorney-at-law but shall be knowledgeable
53 about the needs and protection of children and relevant court
54 procedures. If a separate guardian ad litem is assigned, the person
55 previously serving as counsel for the child shall continue to serve as
56 counsel for the child and a different person shall be assigned as guardian
57 ad litem, unless the court for good cause also determines that a different
58 person should serve as counsel for the child, in which case the court
59 shall notify the office of Chief Public Defender who shall assign a
60 different person as counsel for the child. No person who has served as
61 both counsel and guardian ad litem for a child shall thereafter serve
62 solely as the child's guardian ad litem.

63 (E) The counsel and guardian ad litem's fees, if any, shall be paid by
64 the office of Chief Public Defender unless the parents or guardian, or the
65 estate of the child, are able to pay, in which case the court shall assess
66 the rate the parent or guardian is able to pay and the office of Chief
67 Public Defender may seek reimbursement for the costs of representation
68 from the parents, guardian or estate of the child. [;]

69 (F) Any counsel assigned or appointed to a child pursuant to the
70 provisions of this subdivision shall continue to represent such child after
71 he or she attains the age of eighteen years if such child remains in the
72 custody of the commissioner;

73 (3) The privilege against the disclosure of communications between
74 husband and wife shall be inapplicable and either may testify as to any
75 relevant matter; and

76 (4) Evidence that the child has been abused or has sustained a
77 nonaccidental injury shall constitute prima facie evidence that shall be
78 sufficient to support an adjudication that such child is uncared for or
79 neglected.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2020</i>	46b-129a
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