
[Senate, June 15, 1983 — Moved (Melconian) as a new text of Senate Bill, No. 1079.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

1 SECTION 1. Chapter 208 of the General Laws is hereby
2 amended by striking out section 19 and inserting in place
3 thereof the following section: —

4 *Section 19.* The court may in like manner, upon applica-
5 tion of either party or of a next friend in behalf of the minor
6 children of the parties, make such order relative to the care
7 and custody of such children during the pendency of the ac-
8 tion for divorce as it may consider expedient and for their
9 benefit, subject to the provisions of section thirty-one.

1 SECTION 2. Said chapter 208 is hereby further amended by
2 striking out section 31 and inserting in place thereof the fol-
3 lowing section: —

4 *Section 31.* In making an order or judgment relative to the
5 custody of children pending a controversy between their par-
6 ents, or relative to their final possession, the rights of the
7 parents shall, in the absence of misconduct, be held to be
8 equal, and the happiness and welfare of the children shall
9 determine their custody or possession. When considering the
10 happiness and welfare of the children the court may consider
11 whether or not the child's present or past living conditions
12 adversely affect his physical, mental, moral or emotional
13 health when making an order or judgment relative to the
14 custody of said child.

15 In any proceeding where the custody of a minor child is at
16 issue, during the pendency of such proceeding or any time
17 thereafter, the court may order joint custody as it deems nec-
18 essary and proper.

19 If such minor child is at an age and capacity to form an
20 intelligent preference as to custody, such preference shall be
21 given due weight and consideration for an order of custody or
22 modifications thereof.

23 Consideration in awarding custody shall be given to both
24 parents in order to secure the best interests of the minor
25 child by providing continuation of parent-child relationships,
26 unless one or both parents shall be proven, with clear and con-
27 vincing evidence, to be unfit, or unless one or both parents are
28 unwilling to have custody.

29 If joint custody is found not to be in the best interests of
30 the child, custody may be granted to one parent and, wherever
31 possible, assure the minor child frequent contact with the
32 non-custodial parent. Custody shall not be awarded on the
33 basis of the parent's sex or sex and age of the minor.

34 There shall be a presumption that an award of joint custody
35 is in the best interests of the minor child.

36 In an order of joint custody, the court may order the par-
37 ties to exchange information concerning the health, education,
38 and welfare of the minor child, and matters affecting, but not
39 limited to, the child's educational, religious, financial, and
40 medical necessities.

41 Availability of all records pertaining to the minor child, in-
42 cluding, but not limited to, medical, dental or school records,
43 shall not be denied to a parent whether or not such parent has
44 custody.

45 To secure the welfare and best interests of the child during
46 his custodial minority, the court may, at any time, upon the
47 petition of one parent, both or on the court's own order, ter-
48 minate or modify any order it deems necessary and proper.

49 Where the parents have reached an agreement providing for
50 the custody of the children, the court may enter an order in
51 accordance with such agreement, unless specific findings are
52 made by the justice indicating that such an order would not
53 be in the best interests of the children.

54 In the discretion of the court, joint custody may be awarded
55 in other cases.