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By Ms. Melconian, a petition (accompanied by bill, Senate, No. 1127) of Linda J. Melconian, Martin T. Reilly, John P. Burke, Paul F. Caron, Michael LoPresti, Jr., and Patricia McGovern for legislation relative to child custody. The Judiciary.

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**The Commonwealth of Massachusetts**

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

AN ACT RELATIVE TO CHILD CUSTODY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 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 application  
5 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 provision of section thirty-one.

1 SECTION 2. Said chapter 208 is hereby further amended by  
2 striking out section 81 and inserting in place thereof the follow-  
3 ing section: —

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

15 Where the parents have reached an agreement providing for  
16 the custody of the children, the court may enter an order in

17 accordance with such agreement, unless specific findings are  
18 made by the justice indicating that such an order would not  
19 be in the best interests of the children.

20 In any proceeding where the custody of a minor child is at  
21 issue, during the pendency of such proceeding or any time  
22 there after, the court may order joint custody as it deems  
23 necessary and proper.

24 There shall be a presumption that an award of joint legal  
25 custody is in the best interests of the minor child. Joint legal  
26 custody shall mean sharing in major life decisions including  
27 but not limited to health, education and religion and an oppor-  
28 tunity to participate in a program designed to allow the par-  
29 ties to make their own contract. It shall be within the discre-  
30 tion of the trial judge to set aside this presumption upon the  
31 showing, by either party, that joint custody would not be in  
32 the best interest of the child or children.

33 In an order of joint custody, the court may order the parties  
34 to exchange information concerning the health, education, and  
35 welfare of the minor child, and matters affecting, but not  
36 limited to, the child's educational, religious, financial, and  
37 medical necessities.

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

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

47 To secure the welfare and best interests of the child during  
48 his/her custodial minority, the court may, at any time, upon  
49 the petition of one parent, both or on the court's own order,  
50 terminate or modify any order it deems necessary and proper.