

SENATE No. 818

By Mr. LoPresti, a petition (accompanied by bill, Senate, No. 818) of Michael LoPresti, Jr., for legislation relative to the shared custody of children. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO SHARED CUSTODY OF A CHILD.

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

1 Chapter 208 of the General Laws, as appearing in the 1986
2 Official Edition, is hereby amended by striking out section 31 and
3 inserting in place thereof the following section: —

4 Section 31. For the purposes of this section, the following
5 definitions shall apply:

6 (1) Sole Legal Custody means that one parent shall have the
7 right and responsibility to make major decisions regarding the
8 child's welfare, including matters of education, medical care,
9 emotional, moral and religious development.

10 (2) Share Legal Custody means continued mutual responsibil-
11 ity and involvement by both parents in major decisions regarding
12 the child's welfare, including matters of education, medical care,
13 emotional, moral and religious development.

14 (3) Sole Physical Custody means that a child shall reside with
15 and under the supervision of one parent, subject to reasonable
16 visitation with the other parent, unless the court determines that
17 visitation would not be in the best interest of the child.

18 (4) Shared Physical Custody means that a child shall have
19 periods of residing with and under the supervision of each parent.
20 Physical custody shall be shared by the parents in such a way as
21 to assure a child frequent and continued contact with both
22 parents.

23 In making an order or judgment relative to the custody of
24 children, the rights of the parents shall, in the absence of

25 misconduct, be held to be equal, and the happiness and welfare
26 of the children shall determine their custody. When considering
27 the happiness and welfare of the child, the court shall consider
28 whether or not the child's present or past living conditions
29 adversely affect his or her physical, mental, moral or emotional
30 health.

31 Upon the filing of an action in accordance with the provisions
32 of this section, section twenty-eight of this chapter, or section
33 thirty-two of chapter two hundred and nine and until a judgment
34 on the merits is rendered, absent emergency conditions, abuse or
35 neglect, the parents shall have temporary shared legal custody of
36 any minor child of the marriage; provided, however, that the judge
37 may enter an order for temporary sole legal custody for one parent
38 if written findings are made that such shared custody would not
39 be in the best interest of the child. Nothing herein shall be
40 construed to create any presumption of temporary shared physical
41 custody.

42 In determining whether temporary shared legal custody would
43 not be in the best interest of the child, the court shall consider
44 all relevant facts, including, but not limited to, whether any
45 member of the family has been the perpetrator of domestic
46 violence, abuses alcohol or other drugs, has deserted the child,
47 and whether the parties have a history of being able and willing
48 to cooperate in matters concerning the child.

49 There shall be no presumption either in favor of or against
50 shared legal or physical custody at the time of the trial on the
51 merits.

52 At the trial on the merits, if the issue of custody is contested
53 and either party seeks shared legal or physical custody, the parties,
54 jointly or individually, shall, submit to the court at the trial a
55 shared custody implementation plan setting forth the details of
56 shared custody, including

57 (1) the child's education;

58 (2) the child's health care;

59 (3) procedures for resolving disputes between the parties with
60 respect to child-raising decisions and duties; and

61 (4) the periods of time during which each party will have the
62 child reside and/or visit with him or her, including holidays and

63 vacations, or the procedure by which such periods of time shall
64 be determined.

65 At the trial on the merits, the court shall consider the shared
66 custody implementation plans submitted by the parties. The court
67 may issue a shared legal and/or physical custody order and in
68 conjunction therewith accept the shared custody implementation
69 plan submitted by either party or by the parties jointly or may
70 issue a plan modifying the plan or plans submitted by the parties.
71 The court may also reject the plan and issue a sole legal and/or
72 physical custody award to either parent. A shared custody
73 implementation plan issued or accepted by the court shall become
74 part of the judgment in the action, together with any other
75 appropriate custody orders and orders regarding the responsibility
76 of the parties for the support of the child.

77 Provisions regarding shared custody contained in an agreement
78 executed by the parties and submitted to the court for its approval
79 that addresses the details of shared custody shall be deemed to
80 constitute a shared custody implementation plan for purposes of
81 this section.

82 An award of shared legal or physical custody shall not eliminate
83 responsibility for child support. An order of shared custody shall
84 not constitute grounds for modifying a support order absent
85 demonstrated economic impact that is an otherwise sufficient
86 basis warranting modification.

87 The entry of an order or judgment relative to the custody of
88 minor children shall not negate or impede the ability of the parent
89 not granted custody to have such access to the academic, medical,
90 hospital, or other health records of the child, as he or she would
91 have had if the custody order or judgment had not been entered;
92 provided, however, that if a court has issued an order to vacate
93 against the noncustodial parent or an order prohibiting the
94 noncustodial parent from imposing any restraint upon the
95 personal liberty of the other parent or if nondisclosure of the
96 present or prior address of the child or a party is necessary to
97 ensure the health, safety or welfare of such child or party, the court
98 may order that any part of such record pertaining to such address
99 shall not be disclosed to such noncustodial parent.

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

102 accordance with such agreement, unless specific findings are made
103 by the court indicating that such an order would not be in the
104 best interests of the children.