

HOUSE No. 1638

By Mr. Landry of Waltham, petition of Levy M. Walba, Richard E. Landry and Thomas W. McGee for establishing conciliation divisions in matters relating to domestic relations in the probate courts. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING CONCILIATION DIVISIONS IN MATTERS RELATING TO DOMESTIC RELATIONS LITIGATION IN THE PROBATE COURTS OF THE COMMONWEALTH.

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 six hundred and twenty of the acts of
2 nineteen hundred and sixty-one is hereby repealed.

1 SECTION 2. The General Laws are hereby amended by
2 inserting after chapter 208 the following chapter:—

3 CHAPTER 208A.

4 CONCILIATION DIVISIONS IN THE PROBATE COURTS.

5 *Section 1.* The purposes of this chapter are to protect the
6 rights of children and to promote the public welfare by
7 preserving, promoting, and protecting family life and the
8 institution of matrimony, and to provide means for the
9 reconciliation of spouses and the amicable settlement of
10 domestic and family controversies.

11 *Section 2.* The provisions of this chapter shall be applicable
12 only in counties in which the chief judge of the probate court
13 determines that the social conditions in the county and the
14 number of domestic relations cases in the courts render the
15 procedures herein provided necessary to the full and proper

16 consideration of such cases and the effectuation of the pur-
17 poses of this chapter. Such determination shall be made
18 annually in the month of January by the said judge.

19 *Section 3.* Each probate court shall exercise the jurisdiction
20 conferred by this chapter, and while sitting in the exercise of
21 such jurisdiction shall be known and referred to as the "court
22 of conciliation".

23 *Section 4.* In counties having more than one judge of the
24 probate court, the presiding judge of such court shall an-
25 nually in the month of January, designate at least one judge to
26 hear all cases under this chapter. The judge or judges so
27 designated shall hold as many sessions of the conciliation
28 court in each week as are necessary for the prompt disposi-
29 tion of the business before the court.

30 *Section 5.* The judge of the conciliation court may transfer
31 any case before the conciliation court pursuant to this
32 chapter to the first judge of the probate court for assignment
33 for trial or other proceedings by another judge of the court,
34 whenever in the opinion of the judge of the conciliation court
35 such transfer is necessary to expedite the business of the
36 conciliation court or to insure the prompt consideration of
37 the case. When any case is so transferred, the judge to whom
38 it is transferred shall act as the judge of the conciliation court
39 in the matter.

40 *Section 6.* The first judge of the probate court may appoint
41 a judge of the probate court other than the judge of the
42 conciliation court to act as judge of the conciliation court
43 during any period when the judge of the conciliation court is
44 on vacation, absent, or for any reason unable to perform his
45 duties. Any judge so appointed shall have all the powers and
46 authority of a judge of the conciliation court in cases under
47 this chapter.

48 *Section 7.* In each county with a population of more than
49 two hundred thousand, as determined by the 1960 Federal
50 Census, the chief judge of the probate court may appoint one
51 counselor of conciliation and one secretary to assist the
52 conciliation court in disposing of its business and carrying out
53 its functions.

54 The counselor of conciliation so appointed shall have the
55 power to:

56 (a) Hold conciliation conferences with parties to, and
57 hearings in, proceedings under this chapter, and make recom-
58 mendations concerning such proceedings to the judge of the
59 conciliation court.

60 (b) Provide such supervision in connection with the exer-
61 cise of his jurisdiction as the judge of the conciliation court
62 may direct.

63 (c) Cause such reports to be made, such statistics to be
64 compiled and such records to be kept as the judge of the
65 conciliation court may direct.

66 (d) Hold such hearings in all conciliation court cases as
67 may be required by the judge of the conciliation court, and
68 make such investigations as may be required by the court to
69 carry out the intent of this chapter.

70 Said judge may also appoint such associate counselors of
71 conciliation and other office assistants as may be necessary to
72 assist the conciliation court in disposing of its business. Such
73 associate counselors shall carry out their duties under the
74 supervision of the judge of the conciliation court and shall
75 have all the powers of the counselor of conciliation. Office
76 assistants shall work under the supervision and direction of
77 the counselor of conciliation.

78 Salaries of persons appointed under this section shall be
79 fixed by the county commissioners of the respective
80 counties.

81 *Section 8.* In each county having a population of two
82 hundred thousand or less, as determined by the 1960 Federal
83 Census, the chief judge of the probate court may appoint the
84 following persons to assist the conciliation court in disposing
85 of its business and carrying out its functions:

86 (a) One counselor of conciliation who shall have the power
87 to:

88 (1) Hold conciliation conferences with parties to, and
89 hearings in, proceedings under this chapter, and make recom-
90 mendations concerning such proceedings to the judge of the
91 conciliation court.

92 (2) Provide such supervision in connection with the exer-
93 cise of its jurisdiction as the judge of the conciliation court
94 may direct.

95 (3) Cause such reports to be made, such statistics to be

96 compiled and such records to be kept as the judge of the
97 conciliation court may direct.

98 (4) Hold such hearings in all conciliation court cases as
99 may be required by the judge of the conciliation court, and
100 make all investigations as may be required by the court, and
101 in general perform all such duties as may be required by the
102 court to carry out the intent of this chapter.

103 (b) One assistant commissioner of conciliation.

104 (c) One secretary.

105 (d) Such office assistants as may be required to properly
106 handle the clerical work of the court.

107 The salaries of persons appointed under this section shall
108 be fixed by the county commissioners of the county.

109 *Section 9.* 1. The supervising conciliation counselor shall:

110 (a) Supervise the work of the senior counselors and of the
111 other counselors.

112 (b) Hold conciliation conferences with parties to, and
113 hearings in, proceedings under this chapter, and make recom-
114 mendations concerning such proceedings to the judge of the
115 conciliation court.

116 (c) Provide such supervision in connection with the exer-
117 cise of its jurisdiction as the judge of the conciliation court
118 may order.

119 (d) Cause such reports to be made, such statistics to be
120 compiled, and such records to be kept as the judge of the
121 conciliation court may direct.

122 *Section 10.* The probation offices in every county shall give
123 such assistance to the conciliation court as the court may
124 request to carry out the purposes of this chapter, and to that
125 end the probation officer shall, upon request, make investiga-
126 tions and reports as requested, and in cases pursuant to this
127 chapter.

128 *Section 11.* All probate court hearings or conferences in
129 proceedings under this chapter shall be held in private and
130 the court shall exclude all persons except the officers of the
131 court, the parties, their counsel and witnesses. Conferences
132 may be held with each party and his counsel separately and
133 in the discretion of the judge, or counselor conducting the
134 conference or hearing, counsel for one party may be excluded
135 when the adverse party is present.

136 The files of the conciliation court shall be closed. The
137 petition, supporting affidavit, reconciliation agreement and
138 any court order made in the matter may be opened to
139 inspection by any party or his counsel upon the written
140 authority of the judge of the conciliation court.

141 *Section 12.* Whenever any controversy exists between
142 spouses which may, unless a reconciliation is achieved, result
143 in the dissolution or annulment of the marriage or in the
144 disruption of the household, and there is any minor child of
145 the spouses or of either of them whose welfare might be
146 affected thereby, the conciliation court shall have jurisdiction
147 over the controversy, and over the parties thereto and all
148 persons having any relation to the controversy as further
149 provided in this chapter.

150 *Section 13.* Prior to the filing of any action for divorce,
151 annulment, or separate maintenance, either spouse, or both
152 spouses, may file in the conciliation court a petition invoking
153 the jurisdiction of the court for the purpose of preserving the
154 marriage by effecting a reconciliation between the parties, or
155 for amicable settlement of the controversy between the
156 spouses, so as to avoid further litigation over the issue
157 involved.

158 The petition shall:

159 (a) Allege that a controversy exists between the spouses
160 and request the aid of the court to effect a reconciliation or
161 an amicable settlement of the controversy.

162 (b) State the name and age of each minor child whose
163 welfare may be affected by the controversy.

164 (c) State the name and address of the petitioner, or the
165 names and addresses of the petitioners.

166 (d) If the petition is presented by one spouse only, name
167 the other spouse as a respondent, and state the address of
168 that spouse.

169 (e) Name as a respondent any other person who has any
170 relation to the controversy, and state the address of the
171 person, if known to the petitioner.

172 (f) State such other information as the court may by rule
173 require.

174 *Section 14.* The register of probate shall provide blank
175 forms for petitions for filing pursuant to this chapter. The

176 probation officers of the county and the attaches and em-
177 ployees of the conciliation court shall assist any person in the
178 preparation and presentation of any such petition, when any
179 person requests such assistance. All public officers in each
180 county shall refer to the conciliation court all petitions and
181 complaints made to them in respect to controversies within
182 the jurisdiction of the conciliation court.

183 *Section 15.* The court shall fix a reasonable time and place
184 for hearing on the petition, and shall cause such notice of the
185 filing of the petition and of the time and place of the hearing
186 as it deems necessary, issue a citation to any party requiring
187 him to appear at the time and place stated in the citation, and
188 may require the attendance of witnesses as in other civil
189 cases.

190 *Section 16.* The hearing shall be conducted informally as a
191 conference or series of conferences to effect a reconciliation of
192 the spouses or an amicable adjustment or settlement of the
193 issues of the controversy. To facilitate and promote the
194 purposes of this act the court may, with the consent of both
195 of the parties to the proceeding, recommend or invoke the aid
196 of physicians, psychiatrists, endocrinologists, marriage coun-
197 selors and other specialists. Such aid, however, shall not be at
198 the expense of the court or of the county unless the county
199 commissioners of the county specifically provides and autho-
200 rizes such aid.

201 *Section 17.* At or after hearing, the court may make such
202 orders in respect to the conduct of the spouses and the subject
203 matter of the controversy as the court deems necessary to
204 preserve the marriage or to implement the reconciliation of
205 the spouses, but in no event shall such orders be effective for
206 more than sixty days from the hearing of the petition, unless
207 the parties mutually consent to a continuation of such
208 time.

209 Any reconciliation agreement between the parties may be
210 reduced to writing and, with the consent of the parties, a
211 court order may be made requiring the parties to comply
212 fully therewith.

213 *Section 18.* During a period beginning upon the filing of
214 the petition for conciliation and continuing until sixty days

215 after the hearing of the petition for conciliation, neither
216 spouse shall file any action for divorce, annulment of
217 marriage, or separate maintenance.

218 If, however, after the expiration of such period, the con-
219 troversy between the spouses has not been terminated, either
220 spouse may institute proceedings for divorce, annulment of
221 marriage, or separate maintenance. The pendency of a divorce
222 annulment, or separate maintenance action shall not operate
223 as a bar to the institution of proceedings for conciliation
224 under this chapter.

225 *Section 19.* Whenever any action for divorce, annulment of
226 marriage, or separate maintenance is filed in the probate
227 courts and it appears to the court at any time during the
228 pendency of the action that there is any minor child of the
229 spouses or of either of them whose welfare may be adversely
230 affected by the dissolution or annulment of the marriage or
231 the disruption of the household, and that there appears to be
232 some reasonable possibility of a reconciliation being effected,
233 the case may be transferred to the conciliation court for
234 proceedings for reconciliation of the spouses or amicable
235 settlement of issues in controversy, in accordance with the
236 provisions of this chapter.

