

By Miss Garry of Dracut, petition of Colleen M. Garry and Andrea F. Nuciforo, Jr. relative to shared parenting in cases of divorce. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT RELATIVE TO SHARED PARENTING.

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. Section 31 of Chapter 208 of the General Laws,
2 as appearing in the most recent edition, is hereby amended in the
3 sixth paragraph by striking the following:— When considering the
4 happiness and welfare of the child, the court shall consider
5 whether or not the child’s present or past living conditions
6 adversely affect his physical, mental, moral or emotional health.

1 SECTION 2. Said section 31 is hereby further amended by
2 inserting after the sixth paragraph the following new paragraph:—
3 In furtherance of the public policy that the happiness and the wel-
4 fare of children is enhanced by frequent and continuing contact
5 with both their parents, upon filing of an action in accordance
6 with the provisions of this section, section twenty-eight of this
7 chapter, or section thirty-two of chapter two hundred and nine, the
8 parents shall have temporary shared legal custody and shared
9 physical custody of any minor child of the parties. In making an
10 order or judgment relative to the custody of a minor child, there
11 shall be a presumption that, absent emergency conditions, or
12 abuse or neglect of said child, the parents shall have shared legal
13 custody and shared physical custody of said child. The judge may
14 enter any order or judgment for sole legal custody for one parent
15 and/or sole physical custody for one parent if written findings are
16 made setting forth the specific facts supporting a determination
17 that the child would be harmed as a result of shared legal or

18 shared physical custody. In making any order or judgment con-
19 cerning the parenting schedule of each parent with a minor child,
20 the rights of the parents, absent emergency, abuse, or neglect of
21 one of the parents, shall be held to be equal, and the Court shall
22 endeavor to maximize the exposure of the child to each of the par-
23 ents so far as the same is practicable. A change in the availability
24 of one or both parents to parent a minor child shall be presumed to
25 constitute a material and substantial change in circumstances for
26 the purposes of a complaint or counterclaim seeking to modify a
27 parenting schedule or parenting plan incorporated into a judgment
28 of divorce. Nothing herein shall be deemed to modify the provi-
29 sions of G.L. c.208, sec.31A.

1 SECTION 3. Said section 31 is hereby further amended by
2 striking the following paragraphs:—

3 Upon the filing of an action in accordance with the provisions
4 of this section, section twenty-eight of this chapter, or section
5 thirty-two of chapter two hundred and nine and until a judgment
6 on the merits is rendered, absent emergency conditions, abuse or
7 neglect, the parents shall have temporary shared legal custody of
8 any minor child of the marriage; provided, however, that the judge
9 may enter an order for temporary sole legal custody for one parent
10 if written findings are made that such shared custody would not be
11 in the best interest of the child. Nothing herein shall be construed
12 to create any presumption of temporary shared physical custody.

13 In determining whether temporary shared legal custody would
14 not be in the best interest of the child, the court shall consider all
15 relevant facts including, but not limited to, whether any member
16 of the family abuses alcohol or other drugs or has deserted the
17 child and whether the parties have a history of being able and
18 willing to cooperate in matters concerning the child.

19 If, despite the prior or current issuance of a restraining order
20 against one parent pursuant to chapter two hundred and nine A,
21 the court orders shared legal or physical custody either as a tem-
22 porary order or at a trial on the merits, the court shall provide
23 written findings to support such shared custody order.

24 There shall be no presumption either in favor of or against
25 shared legal or physical custody at the time of the trial on the
26 merits, except as provided for in section 31A.

1 SECTION 4. Said section 31 is hereby further amended in the
2 twelfth paragraph, in the third sentence, by inserting after the
3 words “The court may also reject the plan and issue a sole legal
4 and” the following:— /or sole.

1 SECTION 5. Said section 31 is hereby further amended in the
2 twelfth paragraph, in the third sentence, by inserting after the
3 words “The court may also reject the plan and issue a sole legal
4 and physical custody award to either parent” the following new
5 words:— if written findings are made setting forth the specific
6 facts supporting a determination that the child would be harmed as
7 a result of shared legal or shared physical custody.

1 SECTION 6. Said section 31 is hereby further amended in the
2 twelfth paragraph by inserting after the words “A shared custody
3 implementation plan issued or accepted by the court shall become
4 part of the judgment in the action, together with any other appro-
5 priate custody orders and orders regarding the responsibility of the
6 parties for the support of the child.” the following new sen-
7 tence:— The failure of one or both parties, however, to submit a
8 shared custody implementation plan for trial shall not diminish the
9 presumption of joint physical and joint legal custody, nor affect
10 the child’s right and the parents’ rights to frequent and continuing
11 contact.

1 SECTION 7. Said section 31 is hereby further amended by
2 striking the fourteenth paragraph and inserting in place thereof the
3 following:— If shared physical custody is ordered, the judge shall
4 at that time make a child support order or revise its previous order
5 as appropriate to the circumstances.

1 SECTION 8. Said section 31 is hereby further amended, in the
2 last paragraph, by striking the words “specific findings are made
3 by the court indicating that such an order would not be in the best
4 interests of the children” and inserting in place thereof the
5 following:— written findings are made setting forth the specific
6 facts supporting a determination that the child would be harmed as
7 a result of implementation of the agreement.

