

HOUSE No. 1400

By Ms. Garry of Dracut, a petition (accompanied by bill, House, No. 1400) of Colleen M. Garry and others relative to shared parenting in cases of divorce. The Judiciary.

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to shared parenting.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Colleen M. Garry	36th Middlesex
Jeffrey Davis Perry	5th Barnstable
Christine E. Canavan	10th Plymouth
John P. Fresolo	16th Worcester
John J. Binienda	17th Worcester
James Dwyer	30th Middlesex
Anne M. Gobi	5th Worcester
Denis E. Guyer	2nd Berkshire
Bradley H. Jones, Jr.	20th Middlesex
Joseph F. Wagner	8th Hampden
Elizabeth A. Poirier	14 th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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, as appearing in the most recent edition,
2 is hereby amended in the sixth paragraph by striking the following:- When considering the happiness and
3 welfare of the child, the court shall consider whether or not the child's present or past living conditions
4 adversely affect his physical, mental, moral or emotional health.

5 SECTION 2. Said section 31 is hereby further amended by inserting after the sixth paragraph the
6 following new paragraph:- In furtherance of the public policy that the happiness and welfare of children is
7 enhanced by frequent and continuing contact with both their parents, upon the filing of an action in
8 accordance with the provisions of this section, section twenty eight of this chapter, or section thirty-two of
9 chapter two hundred and nine, the parents shall have temporary shared legal custody and shared physical
10 custody of any minor child of the parties. In making an order or judgment relative to the custody of a
11 minor child, there shall be a presumption that, absent emergency conditions, or abuse or neglect of said
12 child, the parents shall have shared legal custody and shared physical custody of said child. The judge
13 may enter any order or judgment for sole legal custody for one parent and/or sole physical custody for one
14 parent if written findings are made setting forth the specific facts supporting a determination that the child
15 would be harmed as a result of shared legal or shared physical custody. In making any order or judgment
16 concerning the parenting schedule of each parent with a minor child, the rights of the parents, absent
17 emergency, abuse, or neglect of one of the parents, shall be held to be equal, and the Court shall endeavor
18 to maximize the exposure of the child to each of the parents so far as the same is practicable. A change in
19 the availability of one or both parents to parent a minor child, and/or a change in the developmental stage
20 of a minor child, shall be presumed to constitute a material and substantial change in circumstances for
21 the purposes of a complaint or counterclaim seeking to modify a parenting schedule or parenting plan
22 incorporated into a judgment of divorce. Nothing herein shall be deemed to modify the provisions of G.L.
23 c.208, sec. 31A.

24 SECTION 3. Said section 31 is hereby further amended by striking the following paragraphs:-
25 Upon the filing of an action in accordance with the provisions of this section, section twenty-eight of
26 this chapter, or section thirty-two of chapter two hundred and nine and until a judgment on the merits is
27 rendered, absent emergency conditions, abuse or neglect, the parents shall have temporary shared legal
28 custody of any minor child of the marriage; provided, however, that the judge may enter an order for

29 temporary sole legal custody for one parent if written findings are made that such shared custody would
30 not be in the best interest of the child. Nothing herein shall be construed to create any presumption of
31 temporary shared physical custody.

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

36 If, despite the prior or current issuance of a restraining order against one parent pursuant to chapter
37 two hundred and nine A, the court orders shared legal or physical custody either as a temporary order or
38 at a trial on the merits, the court shall provide written findings to support such shared custody order.

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

41 SECTION 4. Said section 31 is hereby further amended in the twelfth paragraph, in the third sentence,
42 by inserting after the words "The court may also reject the plan and issue a sole legal and" the following:-
43 /or sole

44 SECTION 5. Said section 31 is hereby further amended in the twelfth paragraph, in the third sentence,
45 by inserting after the words "The court may also reject the plan and issue a sole legal and physical
46 custody award to either parent" the following new words:- if written findings are made, setting forth the
47 specific facts supporting a determination that the child would be harmed as a result of shared legal or
48 shared physical custody.

49 SECTION 6. Said section 31 is hereby further amended in the twelfth paragraph by inserting after the
50 words "A shared custody implementation plan issued or accepted by the court shall become part of the
51 judgment in the action, together with any other appropriate custody orders and orders regarding the
52 responsibility of the parties for the support of the child." the following new sentence:- The failure of one
53 or both parties, however, to submit a shared custody implementation plan for trial shall not diminish the
54 presumption of joint physical and joint legal custody, nor affect the child's right and the parents' rights to
55 frequent and continuing contact.

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

59 SECTION 8. Said section 31 is hereby further amended, in the last paragraph, by striking the words
60 "specific findings are made by the court indicating that such an order would not be in the best interests of
61 the children" and inserting in place thereof the following:- written findings are setting forth the specific
62 facts supporting a determination that the child would be harmed as a result of implementation of the
63 agreement.