

HOUSE No. 1399

The Commonwealth of Massachusetts

PRESENTED BY:

Shawn Dooley

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 adoption of the accompanying bill:

An Act relative to parenting time.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>1/10/2019</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>1/27/2019</i>

HOUSE No. 1399

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 1399) of Shawn Dooley and Michael J. Soter relative to court ordered parenting time. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 772 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to parenting time.

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 34H of Chapter 71 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out, in line 29 the word “visitation” and inserting
3 in place thereof the following words:- parenting time.

4 SECTION 2. Said chapter 208 of the General Laws is amended by striking out section
5 31, as appearing in the 2012 Official Edition, and inserting in place thereof the following
6 section:-

7 Section 31. Parenting of Children.

8 A. Preamble. Every child in the Commonwealth has the right to a safe, healthy and
9 meaningful relationship with both parents, subject to the court’s determination of each child’s
10 best interest. Shared parental responsibilities and parenting plans should prioritize the unique

11 needs and evolving maturity of each child consistent with the safety, best interest and well-being
12 of the child. A parenting plan shall be incorporated into every temporary order, judgment of
13 divorce nisi and modification judgment involving parental responsibility for minor children.

14 B. Definitions. For purposes of this section, the following terms shall have the meanings
15 set forth below:

16 1. “Decision-Making Responsibility”

17 a. Shared. Both parents shall have mutual responsibility and involvement in major
18 decisions regarding the child’s welfare including matters of education, medical care, and
19 emotional, moral and religious development, in accordance with the best interest of the child.

20 b. Sole. A parent shall have the responsibility to make major decisions regarding the
21 child’s welfare including matters of education, medical care, or emotional, moral and religious
22 development, in accordance with the best interest of the child.

23 2. “Residential Responsibility”

24 a. Shared. A child shall have periods of residing with and being under the care and
25 responsibility of each parent; provided, however, that such periods shall be shared by the parents
26 in such a way as to assure a child frequent, continued and developmentally appropriate contact
27 with both parents and in accordance with the best interest of the child. Time with each parent
28 may but shall not necessarily be equal. Unless the parents agree or the court determines
29 otherwise, a child shall reside one-third of the time or more with each parent; provided, however,
30 that nothing in this paragraph establishes a presumption that a child shall spend a minimum of
31 one-third of the time or more with each parent.

32 b. Primary. A child shall reside with and be under the care and responsibility of one
33 parent, and have reasonable parenting time with the other parent, unless the court determines that
34 such time with the other parent would not be in the best interest of the child

35 3. “Parental Responsibility.” This term shall encompass both decision-making and
36 residential responsibility.

37 4. “Parenting Plan.” A written plan describing parental responsibility relative to each
38 child.

39 5. “Parenting Time.” The time when the child is under the care and responsibility of one
40 parent, regardless of whether or not that parent has shared or primary residential responsibility.

41 C. Decision-Making Responsibility Prior to the Entry of Court Order or Judgment. Upon
42 the filing on an action under this section, parents shall have shared decision-making
43 responsibility of any minor child of their marriage until either the parties enter into a written
44 agreement concerning parental responsibilities or a court orders otherwise.

45 D. Determination of Parental Responsibilities. In determining parental responsibilities,
46 both at the time of entry of temporary orders and judgment, the court shall be guided by the best
47 interest of the child, and shall consider both G. L. c. 208, § 31A, if applicable, and the following
48 factors:

49 1. The relationship of the child with each parent, including the ability to understand the
50 child’s needs and the ability of the parent to be available during his or her parenting time.

51 2. The reasonable wishes of the child, if the child is of sufficient age, capacity,
52 temperament and understanding.

53 3. The ability for each parent to work together and communicate regarding the child's
54 schedule, routine and physical and emotional needs.

55 4. The geographical location and availability of each parent, including the distance
56 between them.

57 5. The willingness and ability of each parent to fulfill caregiving functions, as well as the
58 history of caregiving functions provided by each parent. Caregiving functions are tasks that
59 involve direct interaction with the child or arranging and supervising the interaction and care
60 provided by others.

61 6. Any special needs of the child, including but not limited to the child's developmental,
62 emotional, educational, medical and social needs, and the ability of each parent to meet those
63 needs.

64 7. Whether a parent has inflicted physical, emotional or psychological abuse on the other
65 parent or child.

66 8. Whether a parent's abuse of drugs, alcohol or another substance interferes with that
67 parent's ability to properly care for the child or exposes the child to physical or emotional harm.

68 9. The ability of a parent to foster a positive relationship and frequent and continuing
69 physical, written, electronic, telephonic, and other contact between the child and the other parent;
70 provided however, that the court may not consider this ability if one parent demonstrates that the
71 other parent has sexually assaulted or engaged in a pattern or serious incident of abuse against
72 the other parent or a child and that a continuing relationship with the other parent may endanger
73 the health, safety or welfare of either the parent or the child.

- 74 10. Whether or not the child's present or past living conditions adversely affect the
75 child's physical, mental, moral or emotional health.
- 76 11. Whether either parent has deserted the child.
- 77 12. The presence of and relationship with siblings and other household members.
- 78 13. A parent's incarceration.
- 79 14. A parent's involving or attempting to involve the child in the parents' dispute through
80 manipulation or coercive behavior.
- 81 15. A parent's obstructing or impeding the other parent's communication, cooperation,
82 parenting time, or shared decision-making or attempting to do so without reasonable cause.
- 83 16. A parent's interference with the other parent's access to the child, absent a
84 reasonable, good-faith belief as to protecting the child, parent or household member from
85 physical or severe or persistent emotional harm by the other parent, and subject to judicial
86 findings as to any such reasonable, good-faith belief.
- 87 17. A parent's conviction for a child-related sexual offense.
- 88 18. A parent's conviction for a child-related sexual offense.
- 89 19. Any other additional factors that the court deems relevant.

90 E. Parenting Plans.

- 91 1. A parenting plan shall be incorporated into any temporary order, separation agreement
92 or judgment concerning a minor child. Further, a proposed parenting plan shall be filed

93 simultaneously with any request that an order or judgment pursuant to this section be issued or at
94 such other time as permitted by the court.

95 2. A parenting plan shall include the following as applicable:

96 a. Decision-making responsibilities, which may detail provisions for consultation
97 between and notice to parents;

98 b. Residential responsibilities;

99 c. Legal residence of a child for school enrollment;

100 d. Parenting time schedule, which may detail the following:

101 1. Weekdays;

102 2. Weekends, including holidays and school in-service days preceding or following
103 weekends;

104 3. Holidays, school vacations, birthdays and summer and such other vacation planning;

105 4. Child's extracurricular and school activities;

106 5. Transportation and exchange of the child; and

107 6. Process for periodic changes to the schedule;

108 e. Information sharing and access, including telephone and electronic access;

109 f. Notice and protocols as to travel with the child;

110 g. Relocation of a parent within the Commonwealth of Massachusetts;

111 h. Safety of the child;
112 i. Safety of each parent;
113 j. Nondisclosure of a child's or parent's address on any academic or health record if
114 necessary to ensure his or her health, safety or welfare;

115 k. Procedure for review of the plan; and

116 l. Methods for resolving disputes.

117 3. A parenting plan may also include other provisions that further a child's best interest,
118 as well as provisions which address foreseeable changes in a child's or parent's circumstances.

119 F. Compliance. Upon a finding of contempt for noncompliance with a parenting plan, as
120 additional remedies, the court may order any of the following:

121 1. Temporary adjustment of the parenting plan as informed by any such failure of a
122 parent to comply with the parenting plan;

123 2. Attendance at an appropriate parenting education course; or

124 3. Award of counsel fees, costs and expenses in accordance with the provisions of G.L. c.
125 215 § 34A

126 G. An award of shared decision making authority or residential responsibility shall not
127 affect a parent's responsibility for child support. An order of shared decision making or
128 residential responsibility shall not constitute grounds for modifying a support order absent
129 demonstrated economic impact that is an otherwise sufficient basis warranting modification.

130 H. The entry of an order or judgment relative to the minor children shall not negate or
131 impede the ability of either parent to have access to the academic, medial, hospital, or other
132 health records of the child, as he would have had if the order had not been entered; provided,
133 however, that if a court has issued an order to vacate against a parent or an order prohibiting the
134 parents from imposing any restraint upon the personal liberty of the other parent or if
135 nondisclosure of the present or prior address of the child or party is necessary to ensure the
136 health, safety, or welfare of such a child or party, the court may order that any part of such record
137 pertaining to such address shall not be disclosed to such parent.

138 SECTION 3. Section 31A of said chapter 208 of the General Laws, as so appearing, is
139 hereby amended by striking out, in line 20, the words “sole custody,” and inserting in place
140 thereof the following words:- sole decision making responsibility and sole residential
141 responsibility.

142 SECTION 4. Said section 31A of said chapter 208 of the General Laws, as so appearing,
143 is hereby further amended by striking out, in line 20, the words “shared legal custody,” and
144 inserting in place thereof the following words:- shared decision making responsibility

145 SECTION 5. Said section 31A of said chapter 208 of the General Laws, as so appearing,
146 is hereby further amended by striking out, in lines 20 and 21, the words “shared physical
147 custody,” and inserting in place thereof the following words:- shared residential responsibility

148 SECTION 6. Said section 31A of said chapter 208 of the General Laws, as so appearing,
149 is hereby further amended by striking out, in lines 44, 53, 55, 56, and 59 the word “visitation”
150 and inserting in place thereof the following words:- parenting time.

151 SECTION 7. Section 38 of said chapter 209 of the General Laws, as so appearing, is
152 hereby amended by striking out, in line 20, the words “sole custody,” and inserting in place
153 thereof the following words:- sole decision making responsibility and sole residential
154 responsibility.

155 SECTION 8. Said section 38 of said chapter 209 of the General Laws, as so appearing, is
156 hereby further amended by striking out, in line 20, the words “shared legal custody,” and
157 inserting in place thereof the following words:- shared decision making responsibility

158 SECTION 9. Said section 38 of said chapter 209 of the General Laws, as so appearing, is
159 hereby further amended by striking out, in lines 20 and 21, the words “shared physical custody,”
160 and inserting in place thereof the following words:- shared residential responsibility

161 SECTION 10. Said section 38 of said chapter 209 of the General Laws, as so appearing,
162 is hereby further amended by striking out, in lines 44, 53, 55, 56, and 59 the word “visitation”
163 and inserting in place thereof the following words:- parenting time.

164 SECTION 11. Section 3 of chapter 209A of the General Laws, as appearing in the 2014
165 Official Edition, is hereby amended by striking out, in line 24, the words “sole custody,” and
166 inserting in place thereof the following words:- sole decision making responsibility and sole
167 residential responsibility.

168 SECTION 12. Said section 3 of said chapter 209A of the General Laws, as so appearing,
169 is hereby further amended by striking out, in line 24, the words “shared legal custody,” and
170 inserting in place thereof the following words:- shared decision making responsibility

171 SECTION 13. Said section 3 of said chapter 209A of the General Laws, as so appearing,
172 is hereby further amended by striking out, in lines 24 and 25, the words “shared physical
173 custody,” and inserting in place thereof the following words:- shared residential responsibility

174 SECTION 14. Said section 3 of said chapter 209A of the General Laws, as so appearing,
175 is hereby further amended by striking out, in lines 48, 57, 59, 60, 61, and 63 the word
176 “visitation” and inserting in place thereof the following words:- parenting time.

177 SECTION 15. Section 1 of Chapter 209C of the General Laws, as appearing in the 2014
178 Official Edition, is hereby amended by striking out, in line 9, the words “visitation rights” and
179 inserting in place thereof the following words:- parenting time.

180 SECTION 16. Section 2 of said chapter 209C, as so appearing, is hereby amended by
181 striking out, in line 25, the words “visitation rights” and inserting in place thereof the following
182 words:- parenting time.

183 SECTION 17. Section 4 of said chapter 209C, as so appearing, is hereby amended by
184 striking out, in line 2, the words “visitation” and inserting in place thereof the following words:-
185 parenting time.

186 SECTION 18. Section 5 of said chapter 209C, as so appearing, is hereby amended by
187 striking out, in lines 2, 47, 59, 63 and 64 the words “visitation” and inserting in place thereof the
188 following words:- parenting time.

189 SECTION 19. Section 7 of said chapter 209C as so appearing, is hereby amended by
190 striking out, in line 4, the words “visitation” and inserting in place thereof the following words:-
191 parenting time.

192 SECTION 20. Section 9 of said chapter 209C, as so appearing, is hereby amended by
193 striking out, in line 68, the words “visitation” and inserting in place thereof the following words:-
194 parenting time.

195 SECTION 21. Section 10 of said chapter 209C of the General Laws, as so appearing, is
196 hereby amended by striking out, in line 60, the words “sole custody,” and inserting in place
197 thereof the following words:- sole decision making responsibility and sole residential
198 responsibility.

199 SECTION 22. Said section 10 of said chapter 209C of the General Laws, as so appearing,
200 is hereby further amended by striking out, in line 60, the words “shared legal custody,” and
201 inserting in place thereof the following words:- shared decision making responsibility

202 SECTION 23. Said section 10 of said chapter 209C of the General Laws, as so appearing,
203 is hereby further amended by striking out, in lines 60 and 61, the words “shared physical
204 custody,” and inserting in place thereof the following words:- shared residential responsibility

205 SECTION 24. Said section 10 of said chapter 209C, as so appearing, is hereby further
206 amended by striking out, in line 84, 89, 93, 95, 96, and 99 words “visitation” and inserting in
207 place thereof, in each instance, the following words:- parenting time.

208 SECTION 25. Section 11 of said chapter 209C, as so appearing, is hereby amended by
209 striking out, in lines 45, 15, 27, 61, 64, 70 and 72, the words “visitation” and inserting in place
210 thereof, in each instance, the following words:- parenting time.

211 SECTION 26. Section 15 of said chapter 209C, as so appearing, is hereby amended by
212 striking out, in line 14, the words “visitation” and inserting in place thereof the following words:-
213 parenting time.

214 SECTION 27. Section 20 of said chapter 209C, as so appearing, is hereby amended by
215 striking out, in lines 4 and 5, the words “visitation” and inserting in place thereof the following
216 words:- parenting time.

217 SECTION 28. Section 23 of said chapter 209C, as so appearing, is hereby amended by
218 striking out, in line 3, the words “visitation” and inserting in place thereof the following words:-
219 parenting time.

220 SECTION 29. Section 40 of Chapter 262 of the General Laws, as appearing in the 2014
221 Official Edition, is hereby amended by striking out, in lines 48 and 51 the word “visitation” and
222 inserting in place thereof the following words:- parenting time.