

# HOUSE . . . . . No. 1400

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## The Commonwealth of Massachusetts

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

6           SECTION 2. Said section 31 is hereby further amended by inserting after the sixth  
7 paragraph the following new paragraph:- In furtherance of the public policy that the happiness  
8 and welfare of children is enhanced by frequent and continuing contact with both their parents,  
9 upon the filing of an action in accordance with the provisions of this section, section twenty eight  
10 of this chapter, or section thirty-two of chapter two hundred and nine, the parents shall have  
11 temporary shared legal custody and shared physical custody of any minor child of the parties. In  
12 making an order or judgment relative to the custody of a minor child, there shall be a  
13 presumption that, absent emergency conditions, or abuse or neglect of said child, the parents  
14 shall have shared legal custody and shared physical custody of said child. The judge may enter

any order or judgment for sole legal custody for one parent and/or sole physical custody for one parent if written findings are made setting forth the specific facts supporting a determination that the child would be harmed as a result of shared legal or shared physical custody. In making any order or judgment concerning the parenting schedule of each parent with a minor child, the rights of the parents, absent emergency, abuse, or neglect of one of the parents, shall be held to be equal, and the Court shall endeavor to maximize the exposure of the child to each of the parents so far as the same is practicable. A change in the availability of one or both parents to parent a minor child, and/or a change in the developmental stage of a minor child, shall be presumed to constitute a material and substantial change in circumstances for the purposes of a complaint or counterclaim seeking to modify a parenting schedule or parenting plan incorporated into a judgment of divorce. Nothing herein shall be deemed to modify the provisions of G.L. c.208, sec. 31A.

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

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

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

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

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

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

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

56 SECTION 6. Said section 31 is hereby further amended in the twelfth paragraph by  
57 inserting after the words "A shared custody implementation plan issued or accepted by the court  
58 shall become part of the judgment in the action, together with any other appropriate custody

orders and orders regarding the responsibility of the parties for the support of the child." the following new sentence:- The failure of one or both parties, however, to submit a shared custody implementation plan for trial shall not diminish the presumption of joint physical and joint legal custody, nor affect the child's right and the parents' rights to frequent and continuing contact.

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

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