

# HOUSE . . . . . No. 1553

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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 the modification of custody orders ..

*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 18 of chapter 207 of the General Laws, as appearing in the 2006  
2   Official Edition is hereby amended by adding the following paragraph:-

3           If a motion for change of custody is filed during the time a parent is in active military  
4   duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
5   issue a new order, that changes the child's placement that existed on the date the parent was  
6   called to active military duty, except the court may enter a temporary custody order if there is  
7   clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
8   from active military duty, the court shall reinstate the custody order in effect immediately  
9   preceding that period of active military duty. If a motion for change of custody is filed after a  
10   parent returns from active military duty, the court shall not consider a parent's absence due to  
11   that military duty in a best interest of the child determination.

12          SECTION 2. Section 19 of chapter 208 of the General Laws, as so appearing, is hereby  
13   amended by adding the following paragraph:-

14           If a motion for change of custody is filed during the time a parent is in active military  
15 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
16 issue a new order, that changes the child's placement that existed on the date the parent was  
17 called to active military duty, except the court may enter a temporary custody order if there is  
18 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
19 from active military duty, the court shall reinstate the custody order in effect immediately  
20 preceding that period of active military duty. If a motion for change of custody is filed after a  
21 parent returns from active military duty, the court shall not consider a parent's absence due to  
22 that military duty in a best interest of the child determination.

23           SECTION 3. Section 20 of said chapter 208, as so appearing, is hereby amended by  
24 adding the following paragraph:-

25           If a motion for change of custody is filed during the time a parent is in active military  
26 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
27 issue a new order, that changes the child's placement that existed on the date the parent was  
28 called to active military duty, except the court may enter a temporary custody order if there is  
29 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
30 from active military duty, the court shall reinstate the custody order in effect immediately  
31 preceding that period of active military duty. If a motion for change of custody is filed after a  
32 parent returns from active military duty, the court shall not consider a parent's absence due to  
33 that military duty in a best interest of the child determination.

34           SECTION 4. Section 20A of said chapter 208, as so appearing, is hereby amended by  
35 adding the following paragraph:-

36           If a motion for change of custody is filed during the time a parent is in active military  
37 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
38 issue a new order, that changes the child's placement that existed on the date the parent was  
39 called to active military duty, except the court may enter a temporary custody order if there is  
40 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
41 from active military duty, the court shall reinstate the custody order in effect immediately  
42 preceding that period of active military duty. If a motion for change of custody is filed after a  
43 parent returns from active military duty, the court shall not consider a parent's absence due to  
44 that military duty in a best interest of the child determination.

45           SECTION 5. Section 28 of said chapter 208, as so appearing, is hereby amended by  
46 adding the following paragraph:-

47           If a motion for change of custody is filed during the time a parent is in active military  
48 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
49 issue a new order, that changes the child's placement that existed on the date the parent was  
50 called to active military duty, except the court may enter a temporary custody order if there is  
51 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
52 from active military duty, the court shall reinstate the custody order in effect immediately  
53 preceding that period of active military duty. If a motion for change of custody is filed after a  
54 parent returns from active military duty, the court shall not consider a parent's absence due to  
55 that military duty in a best interest of the child determination.

56           SECTION 6. Section 28A of said chapter 208, as so appearing, is hereby amended by  
57 adding the following paragraph:-

58           If a motion for change of custody is filed during the time a parent is in active military  
59   duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
60   issue a new order, that changes the child's placement that existed on the date the parent was  
61   called to active military duty, except the court may enter a temporary custody order if there is  
62   clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
63   from active military duty, the court shall reinstate the custody order in effect immediately  
64   preceding that period of active military duty. If a motion for change of custody is filed after a  
65   parent returns from active military duty, the court shall not consider a parent's absence due to  
66   that military duty in a best interest of the child determination.

67           SECTION 7. Section 29 of said chapter 208, as so appearing, is hereby amended by  
68   adding the following paragraph:-

69           If a motion for change of custody is filed during the time a parent is in active military  
70   duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
71   issue a new order, that changes the child's placement that existed on the date the parent was  
72   called to active military duty, except the court may enter a temporary custody order if there is  
73   clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
74   from active military duty, the court shall reinstate the custody order in effect immediately  
75   preceding that period of active military duty. If a motion for change of custody is filed after a  
76   parent returns from active military duty, the court shall not consider a parent's absence due to  
77   that military duty in a best interest of the child determination.

78           SECTION 8. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby  
79   amended by adding the following paragraph:-

80           If a motion for change of custody is filed during the time a parent is in active military  
81 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
82 issue a new order, that changes the child's placement that existed on the date the parent was  
83 called to active military duty, except the court may enter a temporary custody order if there is  
84 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
85 from active military duty, the court shall reinstate the custody order in effect immediately  
86 preceding that period of active military duty. If a motion for change of custody is filed after a  
87 parent returns from active military duty, the court shall not consider a parent's absence due to  
88 that military duty in a best interest of the child determination.

89           SECTION 9. Section 37 of said chapter 209, as so appearing, is hereby amended by  
90 adding the following paragraph:-

91           If a motion for change of custody is filed during the time a parent is in active military  
92 duty, the court shall not enter an order modifying or amending a previous judgment or order, or  
93 issue a new order, that changes the child's placement that existed on the date the parent was  
94 called to active military duty, except the court may enter a temporary custody order if there is  
95 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
96 from active military duty, the court shall reinstate the custody order in effect immediately  
97 preceding that period of active military duty. If a motion for change of custody is filed after a  
98 parent returns from active military duty, the court shall not consider a parent's absence due to  
99 that military duty in a best interest of the child determination.

SECTION 10. Section 2 of chapter 209B of the General Laws is hereby amended by striking out subsection (e), as so appearing, and inserting in place thereof the following subsection:-

(e) If a court of another state has made a custody determination in substantial conformity with this chapter, a court of the commonwealth shall not modify that determination unless (1) it appears to the court of the commonwealth that the court which made the custody determination does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or that such court has declined to assume jurisdiction to modify its determination, (2) a court of the commonwealth now has jurisdiction pursuant to this chapter and (3) if a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in a best interest of the child determination.

SECTION 11. Section 3 of chapter 209C of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(f) If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or

122 issue a new order, that changes the child's placement that existed on the date the parent was  
123 called to active military duty, except the court may enter a temporary custody order if there is  
124 clear and convincing evidence that it is in the best interest of the child. Upon a parent's return  
125 from active military duty, the court shall reinstate the custody order in effect immediately  
126 preceding that period of active military duty. If a motion for change of custody is filed after a  
127 parent returns from active military duty, the court shall not consider a parent's absence due to  
128 that military duty in a best interest of the child determination.