

HOUSE No. 1699

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative to Shared Custody..

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 31 of Chapter 208 of the General Laws, as appearing in the 2004 Official Edition,
2 is hereby amended by striking out the second to the ninth paragraph, and inserting in place
3 thereof the following three paragraphs: -

4 To ensure minor children of frequent and continuing contact and a meaningful
5 relationship with both parents after the parents have separated and divorced, it becomes
6 necessary to encourage parents to share in the rights and responsibilities of child care and
7 rearing. Primary considerations in awarding custody shall be given to both parents jointly in
8 order to secure the best interest of the children by providing continuation of parent-child
9 relationships. It is therefore the presumption of the courts that in most cases shared custody
10 should be considered paramount to ensure the happiness and welfare of the children.

11 In all separation and divorce proceeding involving minor children, it shall be a
12 presumption of the court that both parents have an inalienable right to share temporary and final
13 legal as well as physical custody of the children unless one or both parents (1) are proven to be
14 unfit to such an extent and in such a manner as to cause immediate physical or emotional danger

15 or damages to the children, (2) abandon the children, or (3) voluntary relinquish custody. An
16 agreement signed by both parents defining the shared arrangements shall be the order of the
17 courts, provided the parents have been apprised of their custody rights or unless clear and
18 convincing findings indicate that such an order would not be in the best interest of their children.

19 Only after the parents have attempted and failed to reach an agreement on the shared
20 living arrangements of the children shall the court determine the shared arrangements. The
21 children shall also have the right to reside and spend an equal amount of time with each parent,
22 provided this sharing arrangement does not interfere nor disrupt the school term. If equal time is
23 neither practical nor possible, the right of one parent to a minimum guaranteed amount of time
24 per year with the children shall be established and protected by the courts.