

SENATE No. 1569

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to strengthening family relationships through responsible 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. Chapter 208 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by striking out section 31 and inserting in place thereof the following
3 section: -

4 Section 31. For purposes of this section, the following words shall have the following
5 meanings unless the context requires otherwise:

6 “Parenting plan”, an implementation plan using the standardized parenting plan format,
7 as approved by the chief justice of the probate and family courts, which shall include, setting
8 forth the details of shared physical custody including, but not limited to, the child’s education;
9 the child’s health care; procedures for resolving disputes between the parties with respect to
10 child-raising and duties; and the periods of time during which each party will have the child
11 reside with each parent, including holidays and vacations, or the procedure by which such
12 periods of time shall be determined.

13 “Shared legal custody”, continued mutual responsibility and involvement by both parents
14 in major decisions regarding the child’s welfare, including matters of education, medical care
15 and emotional, moral and religious development.

16 “Shared physical custody”, a child shall reside equally with and be under the supervision
17 of each parent for specified periods of time; provided, however, that physical custody shall be
18 shared by the parents in such a way as to assure a child frequent and continued contact with both
19 parents. The child is not required to reside with each parent for an equal amount of time during
20 any given period.

21 “Sole legal custody”, one parent shall have the right and responsibility to make major
22 decisions regarding the child’s welfare, including matters of education, medical care and
23 emotional, moral and religious development.

24 “Sole physical custody”, a child shall reside with and be under the supervision of one
25 parent, subject to reasonable visitation time by the other parent, unless the court determines that
26 such visitation time would not be in the best interest of the child.

27 There shall be a rebuttable presumption that shared legal and shared physical custody is
28 in the child’s best interest. In making an order of judgment relative to the custody of children,
29 the rights of the parents shall, in the absence of misconduct, be held to be equal, and the
30 happiness and welfare of the children shall determine custody. When considering the happiness
31 and welfare of the child, the court shall consider whether or not the child’s present or past living
32 conditions adversely affect the physical, mental, moral or emotional health of the child, and the
33 willingness and ability of each parent to facilitate and encourage a close and continuing

34 relationship between the child and the other parent. The court shall further consider the capacity
35 and disposition of each parent to comply with the terms of the parenting plan.

36 Upon the filing of an action in accordance with the provisions of this section, section 28
37 of this chapter, or section 32 of chapter 209 and until a judgment on the merits is rendered,
38 absent emergency conditions, abuse or neglect, the parents shall have temporary shared legal and
39 temporary shared physical custody of any minor child of the parents, but the judge may enter an
40 order for temporary sole legal or sole physical custody for one parent if written findings are
41 made that such shared custody would not be in the best interest of the child.

42 In determining whether temporary shared legal or temporary shared physical custody
43 would not be in the best interest of the child, the court shall consider all relevant facts including,
44 but not limited to, whether any member of the family has been the perpetrator of domestic
45 violence, abuses alcohol or other drugs or has deserted the child.

46 If the court finds evidence of abuse, neglect or domestic violence as defined by section
47 31A of chapter 208, section 38 of chapter 209, section 3 of chapter 209A, or section 10 of
48 chapter 209C and issues a temporary or permanent custody order which does not grant shared
49 physical custody, the court shall within 90 days enter written findings of fact as to the effects of
50 the abuse on the child, which findings demonstrate that such order is in the furtherance of the
51 child's best interests and provides for the safety and well-being of the child.

52 If the issue of custody is contested and either part seeks sole legal or physical custody,
53 the burden of proof shall be on the moving party that such a custodial arrangement would be in
54 the best interest of the child and the court shall provide written findings to support such a sole
55 custody order.

56 The parties, jointly or individually, shall submit to the court at the custody hearing or trial
57 a parenting plan. The court shall accept a completed parenting plan submitted and agreed upon
58 by both parties, in the event that a parenting cannot be agreed upon by the parties, the court may
59 issue a parenting plan modifying a plan submitted by the parties. A parenting plan issued or
60 accepted by the court shall become part of the judgment in the action together with any other
61 appropriate custody orders and orders regarding the responsibility of the parties for the support
62 of the child.

63 An award of shared legal or physical custody shall not affect a parent's responsibility for
64 child support. An order of shared custody shall not constitute grounds for modifying a support
65 order absent demonstrated economic impact that is an otherwise sufficient basis warranting
66 modification.

67 The entry of an order of judgment relative to the custody of minor children shall not
68 negate or impede the ability of the non-custodial parent to have access to the academic, medical,
69 hospital or other health records of the child, as the non-custodial parent would have had if the
70 custody order or judgment had not been entered; except, that if a court has issued an order to
71 vacate against the non-custodial parent or an order prohibiting the non-custodial parent from
72 imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the
73 present or prior address of the child or a party is necessary to ensure the health, safety or welfare
74 of such child or party, the court may order that any part of such record pertaining to such address
75 shall not be disclosed to such non-custodial parent.

76 Where the parents have reached an agreement providing for the custody of the children,
77 the court will enter an order in accordance with such agreement, unless specific findings are
78 made by the court indicating that such an order would not be in the best interests of the children.