

# HOUSE . . . . . No. 1522

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Harold P. Naughton, Jr.*

*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 the modification of custody orders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>1/17/2013</i>

# HOUSE . . . . . No. 1522

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By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 1522) of Harold P. Naughton, Jr. relative to the modification of custody orders involving parents called to active military service. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3289 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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 2008  
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 on 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: provided, however, that the court may enter a temporary custody  
7 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a  
8 parent's return from active military duty, the court shall reinstate the custody order in effect  
9 immediately preceding that period of active military duty. If a motion for change of custody is  
10 filed after a parent returns from active military duty, the court shall not consider a parent's  
11 absence due to 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 on 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

called to active military duty; provided, however, that 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 3. Section 20 of said chapter 208, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 4. Section 20A of said chapter 208, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 5. Section 28 of said chapter 208, as so appearing, is hereby amended by adding the

following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 6. Section 28A of said chapter 208, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 7. Section 29 of said chapter 208, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 8. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 9. Section 37 of said chapter 209, as so appearing, is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on 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; provided, however, that 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 10. Section 2 of chapter 209B of the General Laws, as so appearing, 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 on 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; provided, however, that 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 on 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; provided, however, that 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

127 immediately preceding that period of active military duty. If a motion for change of custody is  
128 filed after a parent returns from active military duty, the court shall not consider a parent's  
129 absence due to that military duty in a best interest of the child determination.