HOUSE DOCKET, NO. 3201 FILED ON: 1/16/2015

HOUSE . . . . . No. 1207

The Commonwealth of Massachusetts

PRESENTED BY:

Paul Brodeur

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 child-centered family law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Paul Brodeur	*32nd Middlesex*	*1/16/2015*
Shawn Dooley	*9th Norfolk*	*8/15/2019*
Sheila C. Harrington	*1st Middlesex*	*8/15/2019*
Jason M. Lewis	*Fifth Middlesex*	*8/15/2019*
Brian M. Ashe	*2nd Hampden*	*2/2/2015*
Randy Hunt	*5th Barnstable*	*2/4/2015*
Christopher M. Markey	*9th Bristol*	*2/3/2015*
Jeffrey N. Roy	*10th Norfolk*	*1/31/2015*
Angelo M. Scaccia	*14th Suffolk*	*1/30/2015*
Benjamin Swan	*11th Hampden*	*2/3/2015*
Chris Walsh	*6th Middlesex*	*2/4/2015*

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HOUSE . . . . . No. 1207

By Mr. Brodeur of Melrose, a petition (accompanied by bill, House, No. 1207) of Paul Brodeur and others relative to child-centered family law and child custody determinations. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to child-centered family law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 208 of the General Laws is amended by striking out section 31, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

Section 31. Parenting of Children.

A. Public Policy Statement. It is the policy of the Commonwealth to promote the best interest of children by supporting safe, healthy, and meaningful relationships between children and their parents. Each parent has a right to parent his or her child absent any limiting factor to the contrary and subject to the court's determination of each child's best interest. The Commonwealth encourages shared parental responsibilities and parenting plans that prioritize the unique needs and evolving maturity of each child consistent with the safety and well-being of the child. A parenting plan shall be incorporated into every temporary order, judgment of divorce nisi and modification judgment involving parental responsibility for minor children.

B. Definitions. For purposes of this section, the following terms shall have the meanings set forth below:

1. “Decision-Making Responsibility”

a. Shared. Both parents shall have mutual responsibility and involvement in major decisions regarding the child’s welfare including matters of education, medical care, and emotional, moral and religious development, in accordance with the best interest of the child.

b. Sole. A parent shall have the responsibility to make major decisions regarding the child’s welfare including matters of education, medical care, or emotional, moral and religious development, in accordance with the best interest of the child.

2. “Residential Responsibility”

a. Shared. A child shall have periods of residing with and being under the care and responsibility of each parent; provided, however, that such periods shall be shared by the parents in such a way as to assure a child frequent, continued and developmentally appropriate contact with both parents and in accordance with the best interest of the child. Time with each parent may but shall not necessarily be equal. Unless the parents agree or the court determines otherwise, a child shall reside one-third of the time or more with each parent.

b. Primary. A child shall reside with and be under the care and responsibility of one parent for at least two-thirds of the time, and have reasonable parenting time with the other parent, unless the court determines that such time with the other parent would not be in the best interest of the child.

3. “Parental Responsibility.” This term shall encompass both decision-making and residential responsibility.

4. “Parenting Plan.” A written plan describing parental responsibility relative to each child.

C. Decision-Making Responsibility Prior to the Entry of Court Order or Judgment. Parents shall have shared decision-making responsibility of any minor child of their marriage until a court orders otherwise.

D. Determination of Parental Responsibilities. In determining parental responsibilities, both at the time of entry of temporary orders and judgment, the court shall be guided by the best interest of the child, and shall consider both G. L. c. 208, § 31A1, if applicable, and the following factors:

1. The relationship of the child with each parent.

2. The reasonable wishes of the child, if the child is of sufficient age, capacity, and understanding. When considering the child’s wishes, the court shall also give due consideration to factors which may have unduly influenced the child’s preference.

3. The ability of each parent to communicate and cooperate with the other parent and participate in making joint decisions concerning the child.

4. The present and expected physical, emotional, and geographical availability of each parent.

5. The present interest, desire, and abilities of each parent to fulfill caregiving functions, as well as the history of caregiving functions provided by each parent. Caregiving functions are

tasks that involve direct interaction with the child or arranging and supervising the interaction and care provided by others.

6. The ability of a parent to foster a positive relationship and frequent and continuing physical, written, electronic, telephonic, and other contact between the child and the other parent.

7. Any other additional factors the court deems relevant.

Any award of temporary sole decision-making responsibility shall be supported by a written rationale.

E. Limiting Factors. Factors that may restrict parenting time include, but are not limited to, the following:

1. A parent's emotional abuse of a child.

2. A parent's having inflicted abuse on the other parent or child as provided for in G. L. c. 208, § 31A.

3. A parent's abuse of drugs, alcohol, or another substance that interferes with a parent's caregiving of the child or exposes the child to harm.

4. A parent's incarceration.

5. A parent's involving or attempting to involve the child in the parents' dispute through manipulation or coercive behavior.

6. A parent's obstructing or impeding communication, cooperation, parenting time, or shared decision-making or attempting to do so.

7. A parent's interference with the other parent's access to the child, absent a reasonable, good-faith belief as to protecting the child, parent or household member from physical or severe or persistent emotional harm by the other parent, and subject to judicial findings as to any such reasonable, good-faith belief.

8. A parent's knowingly providing false information to any court regarding parenting.

9. A parent's conviction for a child-related sexual offense.

10. Any other additional factors or behaviors that interfere with a parent's caregiving of the child or expose the child to harm, as the court deems relevant.

F. Parenting Plans.

1. A parenting plan shall be incorporated into any separation agreement concerning a minor child. Further, a proposed parenting plan shall be filed simultaneously with any request that an order or judgment pursuant to this section be issued or at such other time as permitted by the court.

2. A parenting plan shall include the following as applicable:

a. Decision-making responsibilities, which may detail provisions for consultation between and notice to parents;

b. Residential responsibilities;

c. Legal residence of a child for school enrollment;

d. Parenting schedule, which may detail the following:

1. Weekdays;

2. Weekends, including holidays and school in-service days preceding or following weekends;

3. Holidays, school vacations, birthdays and summer and such other vacation planning;

4. Child’s extracurricular and school activities;

5. Transportation and exchange of the child; and

6. Process for periodic changes to the schedule;

e. Information sharing and access, including telephone and electronic access;

f. Notice and protocols as to travel with the child;

g. Relocation of a parent within the Commonwealth of Massachusetts;

h. Safety of the child;

i. Safety of each parent;

j. Nondisclosure of a child's or parent’s address on any academic or health record if necessary to ensure his or her health, safety or welfare;

k. Procedure for review of the plan; and

l. Methods for resolving disputes.

3. A parenting plan may also include other provisions that further a child’s best interest, as well as provisions which address foreseeable changes in a child’s or parent’s circumstances.

G. Compliance. Upon a finding of contempt for noncompliance with a parenting plan, as additional remedies, the court may order any of the following:

1. Adjustment of the parenting plan as informed by any such failure of a parent to comply with the parenting plan;

2. Reimbursement for any of the following incurred as a result of the other parent's failure to comply with the parenting plan:

a. reasonable child care and related expenses;

b. reasonable travel and related expenses; or

c. lost wages.

3. Attendance at an appropriate parenting education course; or

4. Award of counsel fees and costs.