

# HOUSE . . . . . No. 4107

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 30, 2016.

The committee on the Judiciary to whom were referred the petition (accompanied by bill, Senate, No. 834) of Anne M. Gobi, Sal N. DiDomenico, James E. Timilty, Jason M. Lewis and other members of the General Court for legislation relative to Child-Centered Family Law and the petition (accompanied by bill, House, No. 1207) of Paul Brodeur and others relative to child-centered family law and child custody determinations, reports recommending that the accompanying bill (House, No. 4107) ought to pass.

For the committee,

JOHN V. FERNANDES.

**HOUSE . . . . . No. 4107**

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**The Commonwealth of Massachusetts**

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

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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:*

1           SECTION 1. Section 34H of Chapter 71 of the General Laws, as appearing in the 2014  
2   Official Edition, is hereby amended by striking out, in lines 29, 31, and 33 the word “visitation”  
3   and inserting in place thereof the following words:- parenting time.

4           SECTION 2. Section 21 of Chapter 119 of the General Laws, as appearing in the 2014  
5   Official Edition, is hereby amended by striking out, in line 34 the word “visits” and inserting in  
6   place thereof the following words:- parenting time.

7           SECTION 3: Section 35 of said chapter 119 of the General Laws, as so appearing, is  
8   hereby amended by striking out, in line 16 the word “visitation” and inserting in place thereof the  
9   following words:- parenting time.

10          SECTION 4: Section 36 of Chapter 119 of the General Laws, as so appearing, is hereby  
11   amended by striking out, in line 25 the word “visitation” and inserting in place thereof the  
12   following words:- parenting time.

SECTION 5. Section 39D of Chapter 119 of the General Laws, as so appearing, is hereby amended by striking out, in lines 8, 10, 14, 15, 16, and 20 the word “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 6. Section 28 of Chapter 208 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 97 the word “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 7. Said 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. Preamble. Every child in the Commonwealth has the right to a safe, healthy and meaningful relationship with both parents, subject to the court’s determination of each child’s best interest. Shared parental responsibilities and parenting plans should prioritize the unique needs and evolving maturity of each child consistent with the safety, best interest 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”

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

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

38           2. "Residential Responsibility"

39           a. Shared. A child shall have periods of residing with and being under the care and  
40 responsibility of each parent; provided, however, that such periods shall be shared by the parents  
41 in such a way as to assure a child frequent, continued and developmentally appropriate contact  
42 with both parents and in accordance with the best interest of the child. Time with each parent  
43 may but shall not necessarily be equal. Unless the parents agree or the court determines  
44 otherwise, a child shall reside one-third of the time or more with each parent; provided, however,  
45 that nothing in this paragraph establishes a presumption that a child shall spend a minimum of  
46 one-third of the time or more with each parent.

47           b. Primary. A child shall reside with and be under the care and responsibility of one  
48 parent, and have reasonable parenting time with the other parent, unless the court determines that  
49 such time with the other parent would not be in the best interest of the child

50           3. "Parental Responsibility." This term shall encompass both decision-making and  
51 residential responsibility.

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

54           5. “Parenting Time.” The time when the child is under the care and responsibility of one  
55 parent, regardless of whether or not that parent has shared or primary residential responsibility.

56           C. Decision-Making Responsibility Prior to the Entry of Court Order or Judgment. Upon  
57 the filing on an action under this section, parents shall have shared decision-making  
58 responsibility of any minor child of their marriage until either the parties enter into a written  
59 agreement concerning parental responsibilities or a court orders otherwise.

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

64           1. The relationship of the child with each parent, including the ability to understand the  
65 child’s needs and the ability of the parent to be available during his or her parenting time.

66           2. The reasonable wishes of the child, if the child is of sufficient age, capacity,  
67 temperament and understanding.

68           3. The ability for each parent to work together and communicate regarding the child’s  
69 schedule, routine and physical and emotional needs.

70           4. The geographical location and availability of each parent, including the distance  
71 between them.

5. The willingness and ability 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. Any special needs of the child, including but not limited to the child's developmental, emotional, educational, medical and social needs, and the ability of each parent to meet those needs.

7. Whether a parent has inflicted physical, emotional or psychological abuse on the other parent or child.

8. Whether a parent's abuse of drugs, alcohol or another substance interferes with that parent's ability to properly care for the child or exposes the child to physical or emotional harm.

9. 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; provided however, that the court may not consider this ability if one parent demonstrates that the other parent has sexually assaulted or engaged in a pattern or serious incident of abuse against the other parent or a child and that a continuing relationship with the other parent may endanger the health, safety or welfare of either the parent or the child.

10. Whether or not the child's present or past living conditions adversely affect the child's physical, mental, moral or emotional health.

11. Whether either parent has deserted the child.

12. The presence of and relationship with siblings and other household members.

13. A parent's incarceration.

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

15. A parent's obstructing or impeding the other parent's communication, cooperation, parenting time, or shared decision-making or attempting to do so without reasonable cause.

16. 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.

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

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

19. Any other additional factors that the court deems relevant.

#### E. Parenting Plans.

1. A parenting plan shall be incorporated into any temporary order, separation agreement or judgment 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;

- 113           b. Residential responsibilities;
- 114           c. Legal residence of a child for school enrollment;
- 115           d. Parenting time schedule, which may detail the following:
  - 116           1. Weekdays;
  - 117           2. Weekends, including holidays and school in-service days preceding or following
  - 118      weekends;
  - 119           3. Holidays, school vacations, birthdays and summer and such other vacation planning;
  - 120           4. Child's extracurricular and school activities;
  - 121           5. Transportation and exchange of the child; and
  - 122           6. Process for periodic changes to the schedule;
- 123           e. Information sharing and access, including telephone and electronic access;
- 124           f. Notice and protocols as to travel with the child;
- 125           g. Relocation of a parent within the Commonwealth of Massachusetts;
- 126           h. Safety of the child;
- 127           i. Safety of each parent;
- 128           j. Nondisclosure of a child's or parent's address on any academic or health record if
- 129      necessary to ensure his or her health, safety or welfare;
- 130           k. Procedure for review of the plan; and

1. 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.

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

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

2. Attendance at an appropriate parenting education course; or

3. Award of counsel fees, costs and expenses in accordance with the provisions of G.L. c. 215 § 34A

G. An award of shared decision making authority or residential responsibility shall not affect a parent's responsibility for child support. An order of shared decision making or residential responsibility shall not constitute grounds for modifying a support order absent demonstrated economic impact that is an otherwise sufficient basis warranting modification.

H. The entry of an order or judgment relative to the minor children shall not negate or impede the ability of either parent to have access to the academic, medial, hospital, or other health records of the child, as he would have had if the order had not been entered; provided, however, that if a court has issued an order to vacate against a parent or an order prohibiting the parents from imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the present or prior address of the child or party is necessary to ensure the

151 health, safety, or welfare of such a child or party, the court may order that any part of such record  
152 pertaining to such address shall not be disclosed to such parent.

153 SECTION 8. Section 31A of said chapter 208 of the General Laws, as so appearing, is  
154 hereby amended by striking out, in line 20, the words “sole custody,” and inserting in place  
155 thereof the following words:- sole decision making responsibility

156 SECTION 9. Said section 31A of said chapter 208 of the General Laws, as so appearing,  
157 is hereby further amended by striking out, in line 20, the words “shared legal custody,” and  
158 inserting in place thereof the following words:- shared decision making responsibility

159 SECTION 10. Said section 31A of said chapter 208 of the General Laws, as so appearing,  
160 is hereby further amended by striking out, in lines 20 and 21, the words “shared physical  
161 custody,” and inserting in place thereof the following words:- shared residential responsibility

162 SECTION 11. Said section 31A of said chapter 208 of the General Laws, as so appearing,  
163 is hereby further amended by striking out, in lines 44, 49, 50, 53, 55, 56, 57, and 59 the word  
164 “visitation” and inserting in place thereof the following words:- parenting time.

165 SECTION 12. Section 1 of Chapter 208B of the General Laws, as appearing in the 2014  
166 Official Edition, is hereby amended by striking out, in lines 3 and 6 the word “visitation” and  
167 inserting in place thereof the following words:- parenting time.

168 SECTION 13. Section 37 of Chapter 209 of the General Laws, as appearing in the 2014  
169 Official Edition, is hereby amended by striking out, in line 91 the word “visitation” and inserting  
170 in place thereof the following words:- parenting time.

171           SECTION 14. Section 38 of said chapter 209 of the General Laws, as so appearing, is  
172 hereby amended by striking out, in line 20, the words “sole custody,” and inserting in place  
173 thereof the following words:- sole decision making responsibility

174           SECTION 15. Said section 38 of said chapter 209 of the General Laws, as so appearing,  
175 is hereby further amended by striking out, in line 20, the words “shared legal custody,” and  
176 inserting in place thereof the following words:- shared decision making responsibility

177           SECTION 16. Said section 38 of said chapter 209 of the General Laws, as so appearing,  
178 is hereby further amended by striking out, in lines 20 and 21, the words “shared physical  
179 custody,” and inserting in place thereof the following words:- shared residential responsibility

180           SECTION 17. Said section 38 of said chapter 209 of the General Laws, as so appearing,  
181 is hereby further amended by striking out, in lines 44, 49, 50, 53, 55, 56, 57, and 59 the word  
182 “visitation” and inserting in place thereof the following words:- parenting time.

183           SECTION 18. Section 3 of chapter 209A of the General Laws, as appearing in the 2014  
184 Official Edition, is hereby amended by striking out, in line 24, the words “sole custody,” and  
185 inserting in place thereof the following words:- sole decision making responsibility

186           SECTION 19. Said section 3 of said chapter 209A of the General Laws, as so appearing,  
187 is hereby further amended by striking out, in line 24, the words “shared legal custody,” and  
188 inserting in place thereof the following words:- shared decision making responsibility

189           SECTION 20. Said section 3 of said chapter 209A of the General Laws, as so appearing,  
190 is hereby further amended by striking out, in lines 24 and 25, the words “shared physical  
191 custody,” and inserting in place thereof the following words:- shared residential responsibility

192           SECTION 21. Said section 3 of said chapter 209A of the General Laws, as so appearing,  
193 is hereby further amended by striking out, in lines 48, 53, 54, 57, 59, 60, 61, and 63 the word  
194 “visitation” and inserting in place thereof the following words:- parenting time.

195           SECTION 22. Section 1 of Chapter 209C of the General Laws, as appearing in the 2014  
196 Official Edition, is hereby amended by striking out, in line 7, the words “visitation rights” and  
197 inserting in place thereof the following words:- parenting time.

198           SECTION 23. Section 2 of said chapter 209C, as so appearing, is hereby amended by  
199 striking out, in line 19, the words “visitation rights” and inserting in place thereof the following  
200 words:- parenting time.

201           SECTION 24. Section 3 of said chapter 209C, as so appearing, is hereby amended by  
202 striking out, in lines 7, 8, 16 and 18, the words “visitation” and inserting in place thereof, in each  
203 instance, the following words:- parenting time.

204           SECTION 25. Section 4 of said chapter 209C, as so appearing, is hereby amended by  
205 striking out, in line 1, the words “visitation” and inserting in place thereof the following words:-  
206 parenting time.

207           SECTION 26. Section 5 of said chapter 209C, as so appearing, is hereby amended by  
208 striking out, in lines 1, 35, 44, 47 and 48 the words “visitation” and inserting in place thereof the  
209 following words:- parenting time.

210           SECTION 27. Section 7 of said chapter 209C as so appearing, is hereby amended by  
211 striking out, in line 3, the words “visitation” and inserting in place thereof the following words:-  
212 parenting time.

213           SECTION 28. Section 9 of said chapter 209C, as so appearing, is hereby amended by  
214 striking out, in line 49, the words “visitation” and inserting in place thereof the following words:-  
215 parenting time.

216           SECTION 29. Section 10 of said chapter 209C of the General Laws, as so appearing, is  
217 hereby amended by striking out, in line 60, the words “sole custody,” and inserting in place  
218 thereof the following words:- sole decision making responsibility

219           SECTION 30. Said section 10 of said chapter 209C of the General Laws, as so appearing,  
220 is hereby further amended by striking out, in line 60, the words “shared legal custody,” and  
221 inserting in place thereof the following words:- shared decision making responsibility

222           SECTION 31. Said section 10 of said chapter 209C of the General Laws, as so appearing,  
223 is hereby further amended by striking out, in lines 60 and 61, the words “shared physical  
224 custody,” and inserting in place thereof the following words:- shared residential responsibility

225           SECTION 32. Said section 10 of said chapter 209C, as so appearing, is hereby further  
226 amended by striking out, in line 60, 64, 68, 69 and 70e words “visitation” and inserting in place  
227 thereof, in each instance, the following words:- parenting time.

228           SECTION 33. Said section 10 of said chapter 209C, as so appearing, is hereby further  
229 amended by striking out, in line 64, the words “visitation center” and inserting in place thereof  
230 the following words:- parenting center.

231           SECTION 34. Section 11 of said chapter 209C, as so appearing, is hereby amended by  
232 striking out, in lines 4, 11, 19, 44, 46, 51 and 53, the words “visitation” and inserting in place  
233 thereof, in each instance, the following words:- parenting time.

234           SECTION 35. Section 15 of said chapter 209C, as so appearing, is hereby amended by  
235 striking out, in line 11, the words “visitation” and inserting in place thereof the following words:-  
236 parenting time.

237           SECTION 36. Section 20 of said chapter 209C, as so appearing, is hereby amended by  
238 striking out, in lines 3 and 4, the words “visitation” and inserting in place thereof the following  
239 words:- parenting time.

240           SECTION 37. Section 23 of said chapter 209C, as so appearing, is hereby amended by  
241 striking out, in line 3, the words “visitation” and inserting in place thereof the following words:-  
242 parenting time.

243           SECTION 38. Section 40 of Chapter 262 of the General Laws, as appearing in the 2014  
244 Official Edition, is hereby amended by striking out, in lines 48 and 51 the word “visitation” and  
245 inserting in place thereof the following words:- parenting time.