

HOUSE No. 4544

Substituted by the House, on motion of Mr. Fernandes of Milford, for a bill with the same title (House, No. 4107). July 23, 2016.

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:

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 line 29, the word “visitation” and inserting
3 in place thereof the following words:- parenting time, as defined in section 31 of chapter 208.

4 SECTION 2. Chapter 208 of the General Laws is hereby amended by striking out section
5 31 and inserting in place thereof the following section:-

6 Section 31. A. The general court finds that every child in the commonwealth has the
7 right to a safe, healthy and meaningful relationship with both parents, subject to the court’s
8 determination of each child’s best interest, and encourages shared parental responsibilities.
9 Parenting plans should prioritize the unique needs and evolving maturity of each child consistent
10 with the safety, best interest and well-being of the child. A parenting plan shall be incorporated
11 into every order, judgment of divorce and modification judgment involving parental
12 responsibility for minor children.

B. For purposes of this chapter, the following terms shall, unless the context dictates otherwise, have the following meanings:-

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 in accordance with the best interest of the child. Time with each parent may but shall not necessarily be equal. The parenting plan shall be known as shared residential responsibility only if the child’s period of residing with and being under the care and responsibility of each parent amounts to one-third or more of the parenting time; provided, however, that nothing in this paragraph establishes a presumption that a child shall spend a minimum of 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, 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.

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

C. Upon the filing of an action under this section, parents shall have shared decision-making responsibility of any minor child of their marriage until either the parties enter into a written agreement concerning parental responsibilities or a court orders otherwise. A parenting plan shall be included in any temporary order issued by the court involving parental responsibility for minor children.

D. In determining parental responsibilities, both at the time of entry of orders and judgment, the court shall at all times be guided by the best interest of the child, and shall consider both section 31A, if applicable, and the following factors as evidence or information is presented thereon:

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

53 2. The reasonable wishes of the child, if the child is of sufficient age, capacity,
54 temperament and understanding. When considering the child's wishes, the court may also give
55 due consideration to factors that have unduly influenced the child's preference.

56 3. The ability for each parent to work together and communicate cooperatively with the
57 other regarding the child's schedule, routine and physical and emotional needs and; the ability of
58 a parent to foster a positive relationship and frequent and continuing physical, written, electronic,
59 telephonic and other contact between the child and the other parent.

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

62 5. The willingness and ability of each parent to fulfill caregiving functions, as well as the
63 history of caregiving functions provided by each parent. Caregiving functions are tasks that
64 involve direct interaction with the child or arranging and supervising the interaction and care
65 provided by others.

66 6. Any special needs of the child, including but not limited to the child's developmental,
67 emotional, educational, medical and social needs, and the ability of each parent to meet those
68 needs.

69 7. Whether a parent has inflicted physical, emotional or psychological abuse on the other
70 parent or child, including but not limited to, whether a parent has sexually assaulted or engaged
71 in a pattern or serious incident of abuse against the other parent or a child.

72 8. Whether a continuing relationship with the other parent may endanger the health,
73 safety or welfare of either the parent or the child.

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

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

79 11. Whether there has been a lack of a meaningful relationship between a parent and the
80 child, and the reasons for any estrangement from the child.

81 12. The presence of siblings or other household members, and the parent's and the
82 child's relationships with those siblings and other household members.

83 13. A parent's incarceration.

84 14. A parent's involving or attempting to involve the child in the parents' dispute through
85 manipulation or coercive behavior; a parent's obstructing or impeding the other parent's
86 reasonable communication, cooperation, parenting time, or shared decision-making or attempting
87 to do so without reasonable cause or; a parent's interference with the other parent's access to the
88 child, absent a reasonable, good-faith belief as to protecting the child, parent or household
89 member from physical or severe or persistent emotional harm by the other parent, and subject to
90 judicial findings as to any such reasonable, good-faith belief.

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

92 16. Any other additional factors that the court deems relevant.

93 E. 1. A parenting plan shall be incorporated into any order, separation agreement or
94 judgment concerning a minor child. Further, a proposed parenting plan shall be filed

95 simultaneously with any request that an order or judgment pursuant to this section be issued or at
96 such other time as permitted by the court.

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

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

100 b. Residential responsibilities;

101 c. Legal residence of a child for school enrollment;

102 d. Parenting time schedule, which may detail the following:

103 i. Weekday parenting time with the child;

104 ii. Weekend parenting time with the child, including holidays and school in-service
105 days preceding or following weekends;

106 iii. Holidays, school vacations, birthdays and summer and such other vacation
107 planning;

108 iv. Child's extracurricular and school activities;

109 v. Transportation and exchange of the child; and

110 vi. Process for periodic changes to the schedule;

111 vii. Information sharing and access, including telephone and electronic access;

112 viii. Notice and protocols as to travel with the child;

- 113 ix. Relocation of a parent within the Commonwealth of Massachusetts;
- 114 x. Safety of the child;
- 115 xi. Safety of each parent;
- 116 xii. Nondisclosure of a child's or parent's address on any academic or health record if
- 117 necessary to ensure his or her health, safety or welfare;
- 118 xiii. Procedure for review of the plan; and
- 119 xiv. Methods for resolving disputes.

120 3. A parenting plan may also include other provisions that further a child's best interest,

121 as well as provisions which address foreseeable changes in a child's or parent's circumstances.

122 F. Upon a finding of contempt for noncompliance with a parenting plan, as additional

123 remedies to those provided for in section 34A of chapter 215, the court may order any of the

124 following:

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

126 with the parenting plan;

127 2. Attendance at an appropriate parenting education course;

128 3. Award of counsel fees, costs and expenses; or

129 4. Reimbursement for any of the following incurred as a result of the other parent's

130 failure to comply with the parenting plan:

131 a. reasonable child care and related expenses;

b. reasonable travel and related expenses; or

c. lost wages.

G. 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, medical, hospital, or other health records of the child, as either parent 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 health, safety, or welfare of such a child or party, the court may order that any part of such record pertaining to such address shall not be disclosed to such parent.

SECTION 3. Section 31A of said chapter 208 of the General Laws, as so appearing, is hereby amended by striking out, in lines 20 to 21, inclusive, the words “sole custody, shared legal custody or shared physical custody,” and inserting in place thereof the following words:- sole decision making responsibility and sole residential responsibility, shared decision making responsibility or shared residential responsibility.

SECTION 4. Said section 31A of said chapter 208 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 44, 53, 55, 56 and 59, the word “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 5. Section 38 of chapter 209 of the General Laws, as so appearing, is hereby amended by striking out, in lines 20 to 21, inclusive, the words “sole custody, shared legal custody, or shared physical custody” and inserting in place thereof the following words:- sole

153 decision making responsibility and sole residential responsibility, shared decision making
154 responsibility or shared residential responsibility.

155 SECTION 6. Said section 38 of said chapter 209 of the General Laws, as so appearing, is
156 hereby further amended by striking out, in lines 44, 53, 55, 56, and 59 the word “visitation” and
157 inserting in place thereof the following words:- parenting time.

158 SECTION 7. Section 3 of chapter 209A of the General Laws, as appearing in the 2014
159 Official Edition, is hereby amended by striking out, in lines 24 to 25, inclusive, the words “sole
160 custody, shared legal custody or shared physical custody” and inserting in place thereof the
161 following words:- sole decision making responsibility and sole residential responsibility, shared
162 decision making responsibility or shared residential responsibility.

163 SECTION 8. Said section 3 of said chapter 209A of the General Laws, as so appearing, is
164 hereby further amended by striking out, in lines 48, 57, 59, 60, 61 and 63 the word “visitation”
165 and inserting in place thereof the following words:- parenting time.

166 SECTION 9. Section 1 of chapter 209C of the General Laws, as appearing in the 2014
167 Official Edition, is hereby amended by striking out, in line 9, the words “visitation rights” and
168 inserting in place thereof the following words:- parenting time.

169 SECTION 10. Section 2 of said chapter 209C, as so appearing, is hereby amended by
170 striking out, in line 25, the words “visitation rights” and inserting in place thereof the following
171 words:- parenting time.

172 SECTION 11. Section 4 of said chapter 209C, as so appearing, is hereby amended by
173 striking out, in line 2, the word “visitation” and inserting in place thereof the following words:-
174 parenting time.

175 SECTION 12. Section 5 of said chapter 209C, as so appearing, is hereby amended by
176 striking out, in lines 2,47, 59, 63 and 64 the word “visitation” and inserting in place thereof the
177 following words:- parenting time.

178 SECTION 13. Section 7 of said chapter 209C as so appearing, is hereby amended by
179 striking out, in line 4, the word “visitation” and inserting in place thereof the following words:-
180 parenting time.

181 SECTION 14. Section 9 of said chapter 209C, as so appearing, is hereby amended by
182 striking out, in line 68, the word “visitation” and inserting in place thereof the following words:-
183 parenting time.

184 SECTION 15. Section 10 of said chapter 209C of the General Laws, as so appearing, is
185 hereby amended by striking out, in lines 60 to 61, inclusive, the words “sole custody, shared
186 legal custody, or shared physical custody” and inserting in place thereof the following words:-
187 sole decision making responsibility and sole residential responsibility, shared decision making
188 responsibility or shared residential responsibility.

189 SECTION 16. Said section 10 of said chapter 209C, as so appearing, is hereby further
190 amended by striking out, in lines 84, 89, 93, 95, 96 and 99 the word “visitation” and inserting in
191 place thereof, in each instance, the following words:- parenting time.

192 SECTION 17. Section 11 of said chapter 209C, as so appearing, is hereby amended by
193 striking out, in lines 15, 27, 61, 64, 70 and 72, the word “visitation” and inserting in place
194 thereof, in each instance, the following words:- parenting time.

195 SECTION 18. Section 15 of said chapter 209C, as so appearing, is hereby amended by
196 striking out, in line 14, the word “visitation” and inserting in place thereof the following words:-
197 parenting time.

198 SECTION 19. Section 20 of said chapter 209C, as so appearing, is hereby amended by
199 striking out, in lines 4 and 5, the word “visitation” and inserting in place thereof the following
200 words:- parenting time.

201 SECTION 20. Section 23 of said chapter 209C, as so appearing, is hereby amended by
202 striking out, in line 3, the word “visitation” and inserting in place thereof the following words:-
203 parenting time.

204 SECTION 21. Section 40 of chapter 262 of the General Laws, as appearing in the 2014
205 Official Edition, is hereby amended by striking out, in lines 48 and 51 the word “visitation” and
206 inserting in place thereof the following words:- parenting time.