HOUSE DOCKET, NO. 1768 FILED ON: 1/19/2017

HOUSE . . . . . No. 772

The Commonwealth of Massachusetts

PRESENTED BY:

Shawn Dooley

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 parenting time.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Shawn Dooley	*9th Norfolk*	*1/19/2017*
Bud Williams	*11th Hampden*	*1/19/2017*
Paul R. Heroux	*2nd Bristol*	*1/19/2017*
Chris Walsh	*6th Middlesex*	*1/19/2017*
Paul K. Frost	*7th Worcester*	*1/19/2017*

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HOUSE . . . . . No. 772

By Mr. Dooley of Norfolk, a petition (accompanied by bill, House, No. 772) of Shawn Dooley and others relative to court ordered parenting time. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to parenting time.

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

SECTION 2. 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”

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; 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. Decision-Making Responsibility Prior to the Entry of Court Order or Judgment. Upon the filing on 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.

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, § 31A, if applicable, and the following factors:

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

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

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

4. The geographical location and availability of each parent, including the distance 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;

b. Residential responsibilities;

c. Legal residence of a child for school enrollment;

d. Parenting time 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.

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 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 line 20, the words “sole custody,” and inserting in place thereof the following words:- sole decision making responsibility and sole 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 line 20, the words “shared legal custody,” and inserting in place thereof the following words:- shared decision making responsibility

SECTION 5. Said section 31A of said chapter 208 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 20 and 21, the words “shared physical custody,” and inserting in place thereof the following words:- shared residential responsibility

SECTION 6. 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 7. Section 38 of said chapter 209 of the General Laws, as so appearing, is hereby amended by striking out, in line 20, the words “sole custody,” and inserting in place thereof the following words:- sole decision making responsibility and sole residential responsibility.

SECTION 8. Said section 38 of said chapter 209 of the General Laws, as so appearing, is hereby further amended by striking out, in line 20, the words “shared legal custody,” and inserting in place thereof the following words:- shared decision making responsibility

SECTION 9. Said section 38 of said chapter 209 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 20 and 21, the words “shared physical custody,” and inserting in place thereof the following words:- shared residential responsibility

SECTION 10. Said section 38 of said chapter 209 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 11. Section 3 of chapter 209A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 24, the words “sole custody,” and inserting in place thereof the following words:- sole decision making responsibility and sole residential responsibility.

SECTION 12. Said section 3 of said chapter 209A of the General Laws, as so appearing, is hereby further amended by striking out, in line 24, the words “shared legal custody,” and inserting in place thereof the following words:- shared decision making responsibility

SECTION 13. Said section 3 of said chapter 209A of the General Laws, as so appearing, is hereby further amended by striking out, in lines 24 and 25, the words “shared physical custody,” and inserting in place thereof the following words:- shared residential responsibility

SECTION 14. Said section 3 of said chapter 209A of the General Laws, as so appearing, is hereby further amended by striking out, in lines 48, 57, 59, 60, 61, and 63 the word “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 15. Section 1 of Chapter 209C of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 9, the words “visitation rights” and inserting in place thereof the following words:- parenting time.

SECTION 16. Section 2 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 25, the words “visitation rights” and inserting in place thereof the following words:- parenting time.

SECTION 17. Section 4 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 2, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 18. Section 5 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 2, 47, 59, 63 and 64 the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 19. Section 7 of said chapter 209C as so appearing, is hereby amended by striking out, in line 4, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 20. Section 9 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 68, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 21. Section 10 of said chapter 209C of the General Laws, as so appearing, is hereby amended by striking out, in line 60, the words “sole custody,” and inserting in place thereof the following words:- sole decision making responsibility and sole residential responsibility.

SECTION 22. Said section 10 of said chapter 209C of the General Laws, as so appearing, is hereby further amended by striking out, in line 60, the words “shared legal custody,” and inserting in place thereof the following words:- shared decision making responsibility

SECTION 23. Said section 10 of said chapter 209C of the General Laws, as so appearing, is hereby further amended by striking out, in lines 60 and 61, the words “shared physical custody,” and inserting in place thereof the following words:- shared residential responsibility

SECTION 24. Said section 10 of said chapter 209C, as so appearing, is hereby further amended by striking out, in line 84, 89, 93, 95, 96, and 99 words “visitation” and inserting in place thereof, in each instance, the following words:- parenting time.

SECTION 25. Section 11 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 45, 15, 27, 61, 64, 70 and 72, the words “visitation” and inserting in place thereof, in each instance, the following words:- parenting time.

SECTION 26. Section 15 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 14, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 27. Section 20 of said chapter 209C, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 28. Section 23 of said chapter 209C, as so appearing, is hereby amended by striking out, in line 3, the words “visitation” and inserting in place thereof the following words:- parenting time.

SECTION 29. Section 40 of Chapter 262 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 48 and 51 the word “visitation” and inserting in place thereof the following words:- parenting time.