

HOUSE No. 3390

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher M. Markey

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 to expedite care and custody of minor children modification proceedings.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|--------------------|------------------|
| <i>Christopher M. Markey</i> | <i>9th Bristol</i> | <i>1/18/2019</i> |

HOUSE No. 3390

By Mr. Markey of Dartmouth, a petition (accompanied by bill, House, No. 3390) of Christopher M. Markey relative to care and custody of minor children modification proceedings. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3091 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to expedite care and custody of minor children modification proceedings.

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 6C of chapter 215 as appearing in the 2016 Official Edition
- 2 is hereby amended by striking out the Section and replacing it with the following:
- 3 (a) After a judgment pursuant to this chapter relative to the care and custody of minor
- 4 children, either parent, or a next friend on behalf of the children after notice to both parents, may
- 5 move the court to make a judgment modifying its earlier judgment as to the care and custody of
- 6 said minor children.
- 7 (b) The court shall not modify a judgment for the care and custody of minor children
- 8 unless the court finds that a material and substantial change in the circumstances of the parties
- 9 has occurred and that a modification is necessary in the best interests of the children. The court

10 shall consider the following factors to determine if one or more material and substantial change
11 of circumstances have occurred since the entry of judgment relating to the care and custody of
12 minor children:

13 (1) the age and health of the child and parents;

14 (2) a parent's frequent relocation of the child;

15 (3) a parent's availability to care for the child;

16 (4) a parent's failure to provide the child with food, clothing, medical care, education
17 and other necessary care;

18 (5) development of the child since the entry of judgment;

19 (6) the likelihood of each parent to honor and facilitate the court-ordered parenting
20 arrangements and rights, including but not limited to any history of either parent or caregiver
21 denying parenting time to either parent in violation of a court order;

22 (7) a parenting plan agreed upon and followed by parties that diverges from the
23 judgment;

24 (8) the importance of continuity and stability for the child;

25 (9) evidence of physical or emotional abuse to the child, to the other parent, or to
26 another person;

27 (10) the exposure of the child to any persons residing with a parent that present
28 potential danger to the child;

29 (11) the preference of a child if they are of sufficient age and capacity to express such
30 a preference; and

31 (12) any other relevant factor.

32 (c) To initiate a request to modify a judgment relative to the care and custody of minor
33 children, either party, or a next friend on behalf of the children, may file a properly noticed
34 motion to modify the judgment under the same action as the judgment. Either party, next friend
35 on behalf of the children, any appointed attorney for the children, guardian ad litem, or any other
36 party or entity with standing may request an evidentiary hearing on the motion to modify a
37 judgment relative to the care and custody of minor children and the court shall grant such a
38 request. The court may also set an evidentiary hearing at its discretion. Unless agreed otherwise
39 between the parties and allowed by the court, an evidentiary hearing on a motion to modify a
40 judgment for the care and custody of minor children shall not occur until at least thirty (30) days
41 after service of the motion to modify a judgment relative to the care and custody of minor
42 children under this Section. Unless the parties elect to proceed by argument and the court does
43 not set an evidentiary hearing, the parties and other persons with standing in the matter shall
44 appear at the first hearing on the motion to set a date for an evidentiary hearing. The court may
45 set a hearing for further argument, and may refer the parties and interested persons to probation,
46 or to conciliation upon the request of the parties or on the court's own initiative.

47 (d) The parties shall be permitted to conduct discovery in any manner prescribed by law
48 after the filing of a motion under this Section. Either party may initiate discovery no earlier than
49 after service of a motion under this Section upon the responding party. Unless the court allows

50 otherwise in its discretion, the parties shall complete discovery at least thirty days prior to the
51 date of an evidentiary hearing under this Section.

52 (e) The court may, in its discretion, limit the amount of time allotted for an evidentiary
53 hearing under this Section. If the court does limit the amount of time allotted for an evidentiary
54 hearing, the court shall make written findings of the reasons for limiting the time for hearing
55 after considering the following applicable factors: (1) the nature and complexity of the
56 proceeding; (2) the number and expected testimony of witnesses, including experts; (3) the
57 length of time that has elapsed since the entry of the judgment or other post-judgment
58 adjudication; (4) the number and nature of post-judgment proceedings following the entry of the
59 underlying judgment; and (5) any other relevant factor.

60 (f) The court may enter any orders it deems necessary in the interests of justice to
61 expedite the resolution of a motion under this Section, including but not limited to: (1) requiring
62 the parties to meet and confer in person to try and resolve the pending issues, or referring the
63 matter to probation or conciliation; (2) establishing discovery deadlines and other relevant dates
64 so discovery is completed expeditiously, when applicable; (3) setting a status conference or other
65 appropriate hearings; or (4) entering any other order deemed necessary or prudent given the
66 circumstances of a particular matter.

67 (g) The Chief Administrative Justice of the Trial Court shall establish the requisite filing
68 fee for a motion to modify a judgment relative to the care and custody of minor children. The
69 Chief Administrative Justice of the Trial Court shall create a form to be used for the proceedings
70 described herein entitled, "Motion to Modify Judgment Relative to the Care and Custody of
71 Minor Children," which shall be used by all persons filing a motion under this Section. Any

72 motion under this Section shall be accompanied by an affidavit signed by the moving party under
73 the pains and penalties of perjury establishing the material and substantial change in
74 circumstance warranting modification of the judgment relative to the care and custody of minor
75 children.

76 (h) During the pendency of a proceeding under this Section, upon motion of either party
77 or of a next friend on behalf of the minor children of the parties and notice to the other party or
78 parties, the court may make temporary orders relative to the care and custody of such children.
79 Every order entered shall include specific findings of fact made by the court which clearly
80 demonstrate the injury, harm or damage that might reasonably be expected to occur if relief
81 pending a judgment of modification is not granted. An order entered pursuant to this section may
82 only be entered without advance notice if the court finds that an emergency exists, the nature of
83 which requires the court to act before the opposing party or parties can be heard in opposition. In
84 all such cases, such order shall be for a period not to exceed five days and written notice of the
85 issuance of any such order and the reasons therefor shall be given to the opposing party or parties
86 together with notice of the date, time and place that a hearing on the continuation of such order
87 will be held.

88 (i) Proper notice for a motion to modify a judgment relative to the care and custody of
89 minor children under this Section shall be provided in the manner as set forth in Domestic
90 Relations Procedure Rule 4, except that no summons shall be required or issued in a proceeding
91 under this Section.

92 SECTION 2. Section 28 of chapter 208 of the 2014 Official Edition of the general laws

93 is hereby amended by removing the words “complaint after a divorce” in lines 13 and 19,
94 and adding the following words: “motion after a divorce pursuant to Section 6C of chapter 215”.

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