SENATE DOCKET, NO. 271 FILED ON: 1/10/2019

SENATE . . . . . No. 848

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 determining the best interest of children in probate and family court.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
William N. Brownsberger	*Second Suffolk and Middlesex*	
Jason M. Lewis	*Fifth Middlesex*	*1/29/2019*
Michael J. Barrett	*Third Middlesex*	*1/29/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/1/2019*
Ryan C. Fattman	*Worcester and Norfolk*	*2/7/2019*

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SENATE . . . . . No. 848

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 848) of William N. Brownsberger, Jason M. Lewis, Michael J. Barrett, Sal N. DiDomenico and others for legislation to determine the best interest of children in probate and family court. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *775* OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act relative to determining the best interest of children in probate and family court.

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

1. Decision-Making Responsibility

a. "Shared Decision-Making Responsibility." The parents have mutual responsibility and involvement in major decisions regarding the child's welfare, including matters of education,

extracurricular activities, medical care, emotional and behavioral development, and religious development.

b. "Sole Decision-Making Responsibility." One parent has the right and responsibility to make major decisions regarding the child's welfare, including matters of education, extracurricular activities, medical care, emotional and behavioral development, and religious development.

2. Residential Responsibility

a. "Shared Residential Responsibility." A child has periods of residing with and being under the supervision of each parent in such a way as to assure a child frequent and continued contact with both parents. One residence may be designated as the child's "primary residence" while the parents have "shared residential responsibility."

b. "Primary Residential Responsibility." A child resides with and be under the care and supervision of one parent, and has parenting time with the other parent, unless the court determines that such time with the other parent is not 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 supervision of one parent or a parenting time supervisor, without regard to whether that parent has shared or primary residential responsibility.

B. General Guidance.

1. In making an order or judgment relative to the care of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine the distribution of parental responsibility. When considering the happiness and welfare of the child, the court shall consider whether or not the child's present or past living conditions adversely affect the child's physical, mental, or emotional health. Such conditions and their impact on the child shall be relevant as the court establishes division of parental responsibilities to provide for the safety, welfare and well-being of the child in a manner that is workable for the foreseeable future.

2. Upon the filing of an action in accordance with the provisions of this section, section twenty-eight of this chapter, or section thirty-two of chapter two hundred and nine and until an order or judgment is rendered, absent emergency conditions, abuse, or neglect, the parents shall have temporary shared legal custody of any minor child of the marriage. Nothing herein shall be construed to create any presumption of temporary shared residential responsibility.

3. At any time after the filing of an action in accordance with the provisions of this section, section twenty-eight of this chapter, or section thirty-two of chapter two hundred and nine, the court may enter an order for temporary sole decision-making responsibility for one parent if shared decision-making responsibility would not be in the best interest of the child.

4. If, despite the prior or current issuance of an abuse prevention order against one parent pursuant to chapter two hundred and nine A or of a domestic relations protective order pursuant to section 18 of this chapter, the court orders shared decision-making or residential

responsibility either as a temporary order or as a judgment, the court shall provide written findings to support such order.

5. There shall be no presumption either in favor of or against shared decision-making or shared residential responsibility at the time of the trial, except as provided in section 31A of this chapter.

6. When a party requests distribution of parental responsibility and division of parenting time, that party shall provide a proposed order to the court. At the trial, if the issues of parental responsibility or parenting time are contested and either party seeks shared decision-making or shared residential responsibility, the parties, jointly or individually, shall submit to the court a parenting plan setting forth the details of their proposed plan including, but not limited to: the child's education; the child's health care, procedures for resolving disputes between the parties with respect to child-raising decisions and duties; and the periods of time during which each party will have the child reside or spend time with each party, including holidays and vacations, or the procedure by which such periods of time shall be determined.

7. At trial on the merits, the court shall consider the parties' proposed parenting plans in light of the factors set forth in (C) of this section. The court may accept, change, or reject the parenting plan submitted.

8. Where the parents have reached an agreement providing for parental responsibility of the child, the court may enter an order in accordance with such agreement, unless specific findings are made by the court indicating that such an order would not be in the best interests of the child.

9. Prior orders or agreements shall not create a presumption that their terms shall be continued.

10. A parent's responsibility for child support shall continue to be governed by the Massachusetts Child Support Guidelines as required by section 28 of this chapter, regardless of the use of the terms shared or primary residential responsibility in any order or judgment.

11. The entry of an order or judgment relative to the parental responsibility for the minor children shall not negate or impede the ability of both parents to have access to the academic, medical, hospital, or other health records of the child, as the parent would have had if the order or judgment had not been entered; provided, however, that if a court has issued an order to vacate against one parent or an order prohibiting a parent from imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the records, in whole or in part, is necessary to ensure the health, safety, or welfare of such child or party, the court may order that all or any part of such record the shall not be disclosed to a parent or make other such other orders to restrict release of such records in accordance with G.L. c. 71, s.34H.

C. 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. At the time of entry of temporary orders, the court shall consider holidays and issues related to the child's schedule that are likely to arise before the next date at which orders will be made. In determining the best interest of the child, the court shall consider G.L. c. 208, s.31A, if applicable, and seek to establish a parenting plan that fully provides for the safety of the children and the parties and the well-being of the children, and that is workable.

1. In determining what parental responsibility arrangement and parenting plan provides for the well-being of the child, the court shall consider:

(a) The past, present, and potential future relationship between the parent and the child, including the history of caregiving functions provided by each parent;

(b) The child's adjustment to their school, community, and home, including any siblings and other household members;

(c) The anticipated effect on the child of disrupting or continuing the current custody situation, taking into account any special needs of the child;

(d) The willingness and ability of each parent to allow a close and continuing relationship between the child and the other parent; provided, however, that the court may not consider this factor if the court has found credible concerns related to s.31A or s.(C)(2) herein, whether or not the court has restricted contact based upon those concerns;

(e) The demonstrated capability and desire of each parent to understand and meet the physical, emotional, mental, religious, and social needs of each child, taking into account any special needs of the child; and

(f) The preference of the child, if the child is of sufficient age, temperament, and maturity.

2. In deciding what parental responsibility arrangement and parenting plan is safe for the children and the parties, the court shall consider:

(a) Whether a parent's use of drugs, alcohol, or another substance interferes with that parent's ability to properly care for the child;

(b) Whether a parent has inflicted physical, psychological, emotional, or financial abuse against the other parent, against any household member, or against a child; and

(c) Whether a parent has committed a sexual offense which, after considering the nature of the offense, the age of the victim, and the relationship between the parent and the victim, raises concerns regarding parenting time with the child.

3. In determining what parenting plan and schedule of parenting time will best meet the physical and emotional needs of a child, the court shall seek to create a parenting arrangement that is workable and realistic. In determining workability, the court shall consider:

(a) Whether the proposed arrangement is manageable, over time, for the parties and child, and for all other parties relevant to carrying out the arrangement;

(b) The geographic location and availability of each parent, including each party's access to transportation, distance between the parties, or incarceration of a parent;

(c) Whether the level of cooperation required is within the past and present abilities of the parties and/or includes supports for developing improved cooperation and communication; and

(d) The ability of each parent to provide the required caregiving functions during their parenting time, including the parent's ability to arrange for appropriate care and supervision.;

(e) Whether the length of each parent's parenting time, the location of parenting time, the manner and location of exchange, the presence of supervision or parenting support, and the

location of the parenting time adequately addresses the needs of the child and of each parent in accordance with (C)(1) and (C)(2) of this section.

The court may also consider additional factors that are deemed relevant and proven by the evidence, but must make findings specifying the factors considered and their relative weight.