HOUSE DOCKET, NO. 3509 FILED ON: 2/19/2021

# HOUSE . . . . . No. 1772

## 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: |
|---|---|---|
| *Christopher M. Markey* | *9th Bristol* | *2/19/2021* |

HOUSE DOCKET, NO. 3509 FILED ON: 2/19/2021

# HOUSE . . . . . No. 1772

By Mr. Markey of Dartmouth, a petition (accompanied by bill, House, No. 1772) of Christopher M. Markey relative to care and custody of minor children modification proceedings. The Judiciary.

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court**
**(2021-2022)**

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:*

SECTION 1. Section 6C of chapter 215 as appearing in the 2018 Official Edition is hereby amended by striking out the Section and replacing it with the following:

(a) After a judgment pursuant to this chapter relative to the care and custody of minor children, either parent, or a next friend on behalf of the children after notice to both parents, may move the court to make a judgment modifying its earlier judgment as to the care and custody of said minor children.

(b) The court shall not modify a judgment for the care and custody of minor children unless the court finds that a material and substantial change in the circumstances of the parties has occurred and that a modification is necessary in the best interests of the children. The court shall consider the following factors to determine if one or more material and substantial change of circumstances have occurred since the entry of judgment relating to the care and custody of minor children:

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

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

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

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

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

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

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

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

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

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

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

(12) any other relevant factor.

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

(d) The parties shall be permitted to conduct discovery in any manner prescribed by law after the filing of a motion under this Section. Either party may initiate discovery no earlier than after service of a motion under this Section upon the responding party. Unless the court allows otherwise in its discretion, the parties shall complete discovery at least thirty days prior to the date of an evidentiary hearing under this Section.

(e) The court may, in its discretion, limit the amount of time allotted for an evidentiary hearing under this Section. If the court does limit the amount of time allotted for an evidentiary hearing, the court shall make written findings of the reasons for limiting the time for hearing

after considering the following applicable factors: (1) the nature and complexity of the proceeding; (2) the number and expected testimony of witnesses, including experts; (3) the length of time that has elapsed since the entry of the judgment or other post-judgment adjudication; (4) the number and nature of post-judgment proceedings following the entry of the underlying judgment; and (5) any other relevant factor.

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

(g) The Chief Administrative Justice of the Trial Court shall establish the requisite filing fee for a motion to modify a judgment relative to the care and custody of minor children. The Chief Administrative Justice of the Trial Court shall create a form to be used for the proceedings described herein entitled, “Motion to Modify Judgment Relative to the Care and Custody of Minor Children,” which shall be used by all persons filing a motion under this Section. Any motion under this Section shall be accompanied by an affidavit signed by the moving party under the pains and penalties of perjury establishing the material and substantial change in circumstance warranting modification of the judgment relative to the care and custody of minor children.

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

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

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

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