

SENATE No. 1026

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

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:

Jason M. Lewis

DISTRICT/ADDRESS:

Fifth Middlesex

SENATE No. 1026

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1026) of Jason M. Lewis 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. 1080 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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:

1 SECTION 1. Chapter 208 of the General Laws is amended by striking out section 31, as
2 appearing in the 2020 Official Edition, and inserting in place thereof the following section:

3 Section 31. Parenting of Children.

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

6 1. Decision-Making Responsibility

7 a. “Shared Decision-Making Responsibility.” The parents have mutual responsibility and
8 involvement in major decisions regarding the child’s welfare, including matters of education,

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

11 b. “Sole Decision-Making Responsibility.” One parent has the right and responsibility to
12 make major decisions regarding the child’s welfare, including matters of education,
13 extracurricular activities, medical care, emotional and behavioral development, and religious
14 development.

15 2. Residential Responsibility

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

20 b. “Primary Residential Responsibility.” A child resides with and be under the care and
21 supervision of one parent, and has parenting time with the other parent, unless the court
22 determines that such time with the other parent is not in the best interest of the child.

23 3. “Parental Responsibility.” This term shall encompass both decision-making and
24 residential responsibility.

25 4. “Parenting Plan.” A written plan describing parental responsibility relative to each
26 child.

27 5. “Parenting Time.” The time when the child is under the care and supervision of one
28 parent or a parenting time supervisor, without regard to whether that parent has shared or
29 primary residential responsibility.

30 B. General Guidance.

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

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

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

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

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

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

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

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

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

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

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

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

86 C. Determination of Parental Responsibilities. In determining parental responsibilities,
87 both at the time of entry of temporary orders and judgment, the court shall be guided by the best
88 interest of the child. At the time of entry of temporary orders, the court shall consider holidays
89 and issues related to the child's schedule that are likely to arise before the next date at which
90 orders will be made. In determining the best interest of the child, the court shall consider G.L. c.
91 208, s.31A, if applicable, and seek to establish a parenting plan that fully provides for the safety
92 of the children and the parties and the well-being of the children, and that is workable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

130 (e) Whether the length of each parent's parenting time, the location of parenting time, the
131 manner and location of exchange, the presence of supervision or parenting support, and the
132 location of the parenting time adequately addresses the needs of the child and of each parent in
133 accordance with (C)(1) and (C)(2) of this section.

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