

HOUSE No. 01306

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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 passage of the accompanying bill:

An Act relative to shared parenting.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Daniel Winslow</i>	<i>9th Norfolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>

HOUSE No. 01306

By Ms. Colleen M. Garry of Dracut, petition (accompanied by bill, House, No. 01306) of Angelo M. Scaccia and others relative to shared parenting in cases of divorce. Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1400 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to shared parenting.

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 31 of Chapter 208 of the General Laws, as appearing in the most recent
2 edition, is hereby amended in the sixth paragraph by striking the following:- When considering
3 the happiness and welfare of the child, the court shall consider whether or not the child's present
4 or past living conditions adversely affect his physical, mental, moral or emotional health.

5 SECTION 2. Said section 31 is hereby further amended by inserting after the sixth paragraph
6 the following new paragraph:- In furtherance of the public policy that the happiness and welfare
7 of children is enhanced by frequent and continuing contact with both their parents, upon the
8 filing of an action in accordance with the provisions of this section, section twenty eight of this
9 chapter, or section thirty-two of chapter two hundred and nine, the parents shall have temporary

10 shared legal custody and shared physical custody of any minor child of the parties. In making an
11 order or judgment relative to the custody of a minor child, there shall be a presumption that,
12 absent emergency conditions, or abuse or neglect of said child, the parents shall have shared
13 legal custody and shared physical custody of said child. The judge may enter any order or
14 judgment for sole legal custody for one parent and/or sole physical custody for one parent if
15 written findings are made setting forth the specific facts supporting a determination that the child
16 would be harmed as a result of shared legal or shared physical custody. In making any order or
17 judgment concerning the parenting schedule of each parent with a minor child, the rights of the
18 parents, absent emergency, abuse, or neglect of one of the parents, shall be held to be equal, and
19 the Court shall endeavor to maximize the exposure of the child to each of the parents so far as
20 the same is practicable. A change in the availability of one or both parents to parent a minor
21 child, and/or a change in the developmental stage of a minor child, shall be presumed to
22 constitute a material and substantial change in circumstances for the purposes of a complaint or
23 counterclaim seeking to modify a parenting schedule or parenting plan incorporated into a
24 judgment of divorce. Nothing herein shall be deemed to modify the provisions of G.L. c.208,
25 sec. 31A.

26 SECTION 3. Said section 31 is hereby further amended by striking the following paragraphs:-

27 Upon the filing of an action in accordance with the provisions of this section, section twenty-
28 eight of this chapter, or section thirty-two of chapter two hundred and nine and until a judgment
29 on the merits is rendered, absent emergency conditions, abuse or neglect, the parents shall have
30 temporary shared legal custody of any minor child of the marriage; provided, however, that the
31 judge may enter an order for temporary sole legal custody for one parent if written findings are

32 made that such shared custody would not be in the best interest of the child. Nothing herein shall
33 be construed to create any presumption of temporary shared physical custody.

34 In determining whether temporary shared legal custody would not be in the best interest of
35 the child, the court shall consider all relevant facts including, but not limited to, whether any
36 member of the family abuses alcohol or other drugs or has deserted the child and whether the
37 parties have a history of being able and willing to cooperate in matters concerning the child.

38 If, despite the prior or current issuance of a restraining order against one parent pursuant to
39 chapter two hundred and nine A, the court orders shared legal or physical custody either as a
40 temporary order or at a trial on the merits, the court shall provide written findings to support such
41 shared custody order.

42 There shall be no presumption either in favor of or against shared legal or physical custody at
43 the time of the trial on the merits, except as provided for in section 31A.

44 SECTION 4. Said section 31 is hereby further amended in the twelfth paragraph, in the third
45 sentence, by inserting after the words "The court may also reject the plan and issue a sole legal
46 and" the following:- /or sole

47 SECTION 5. Said section 31 is hereby further amended in the twelfth paragraph, in the third
48 sentence, by inserting after the words "The court may also reject the plan and issue a sole legal
49 and physical custody award to either parent" the following new words:- if written findings are
50 made, setting forth the specific facts supporting a determination that the child would be harmed
51 as a result of shared legal or shared physical custody.

52 SECTION 6. Said section 31 is hereby further amended in the twelfth paragraph by inserting
53 after the words "A shared custody implementation plan issued or accepted by the court shall
54 become part of the judgment in the action, together with any other appropriate custody orders
55 and orders regarding the responsibility of the parties for the support of the child." the following
56 new sentence:- The failure of one or both parties, however, to submit a shared custody
57 implementation plan for trial shall not diminish the presumption of joint physical and joint legal
58 custody, nor affect the child's right and the parents' rights to frequent and continuing contact.

59 SECTION 7. Said section 31 is hereby further amended by striking the fourteenth paragraph
60 and inserting in place thereof the following:- If shared physical custody is ordered, the judge
61 shall at that time make a child support order, or revise its previous order, as appropriate to the
62 circumstances.

63 SECTION 8. Said section 31 is hereby further amended, in the last paragraph, by striking the
64 words "specific findings are made by the court indicating that such an order would not be in the
65 best interests of the children" and inserting in place thereof the following:- written findings are
66 setting forth the specific facts supporting a determination that the child would be harmed as a
67 result of implementation of the agreement.