

HOUSE No. 03289

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr.

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 the modification of custody orders.

PETITION OF:

NAME:

Harold P. Naughton, Jr.

DISTRICT/ADDRESS:

12th Worcester

HOUSE No. 03289

By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 3289) of Harold P. Naughton, Jr. relative to the modification of custody orders involving parents called to active military service. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the modification of custody orders.

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 18 of chapter 207 of the General Laws, as appearing in the 2008 Official
2 Edition is hereby amended by adding the following paragraph:-

3 If a motion for change of custody is filed during the time a parent is on active military duty, the
4 court shall not enter an order modifying or amending a previous judgment or order, or issue a
5 new order, that changes the child's placement that existed on the date the parent was called to
6 active military duty: provided, however, that the court may enter a temporary custody order if
7 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
8 return from active military duty, the court shall reinstate the custody order in effect immediately
9 preceding that period of active military duty. If a motion for change of custody is filed after a
10 parent returns from active military duty, the court shall not consider a parent's absence due to
11 that military duty in a best interest of the child determination.

12 SECTION 2. Section 19 of chapter 208 of the General Laws, as so appearing, is hereby
13 amended by adding the following paragraph:-

14 If a motion for change of custody is filed during the time a parent is on active military duty, the
15 court shall not enter an order modifying or amending a previous judgment or order, or issue a
16 new order, that changes the child's placement that existed on the date the parent was called to
17 active military duty; provided, however, that the court may enter a temporary custody order if
18 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
19 return from active military duty, the court shall reinstate the custody order in effect immediately
20 preceding that period of active military duty. If a motion for change of custody is filed after a
21 parent returns from active military duty, the court shall not consider a parent's absence due to
22 that military duty in a best interest of the child determination.

23 SECTION 3. Section 20 of said chapter 208, as so appearing, is hereby amended by adding the
24 following paragraph:-

25 If a motion for change of custody is filed during the time a parent is on active military duty, the
26 court shall not enter an order modifying or amending a previous judgment or order, or issue a
27 new order, that changes the child's placement that existed on the date the parent was called to
28 active military duty; provided, however, that the court may enter a temporary custody order if
29 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
30 return from active military duty, the court shall reinstate the custody order in effect immediately
31 preceding that period of active military duty. If a motion for change of custody is filed after a
32 parent returns from active military duty, the court shall not consider a parent's absence due to
33 that military duty in a best interest of the child determination.

34 SECTION 4. Section 20A of said chapter 208, as so appearing, is hereby amended by adding the
35 following paragraph:-

36 If a motion for change of custody is filed during the time a parent is on active military duty, the
37 court shall not enter an order modifying or amending a previous judgment or order, or issue a
38 new order, that changes the child's placement that existed on the date the parent was called to
39 active military duty; provided, however, that the court may enter a temporary custody order if
40 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
41 return from active military duty, the court shall reinstate the custody order in effect immediately
42 preceding that period of active military duty. If a motion for change of custody is filed after a
43 parent returns from active military duty, the court shall not consider a parent's absence due to
44 that military duty in a best interest of the child determination.

45 SECTION 5. Section 28 of said chapter 208, as so appearing, is hereby amended by adding the
46 following paragraph:-

47 If a motion for change of custody is filed during the time a parent is on active military duty, the
48 court shall not enter an order modifying or amending a previous judgment or order, or issue a
49 new order, that changes the child's placement that existed on the date the parent was called to
50 active military duty; provided, however, that the court may enter a temporary custody order if
51 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
52 return from active military duty, the court shall reinstate the custody order in effect immediately
53 preceding that period of active military duty. If a motion for change of custody is filed after a
54 parent returns from active military duty, the court shall not consider a parent's absence due to
55 that military duty in a best interest of the child determination.

56 SECTION 6. Section 28A of said chapter 208, as so appearing, is hereby amended by adding the
57 following paragraph:-

58 If a motion for change of custody is filed during the time a parent is on active military duty, the
59 court shall not enter an order modifying or amending a previous judgment or order, or issue a
60 new order, that changes the child's placement that existed on the date the parent was called to
61 active military duty; provided, however, that the court may enter a temporary custody order if
62 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
63 return from active military duty, the court shall reinstate the custody order in effect immediately
64 preceding that period of active military duty. If a motion for change of custody is filed after a
65 parent returns from active military duty, the court shall not consider a parent's absence due to
66 that military duty in a best interest of the child determination.

67 SECTION 7. Section 29 of said chapter 208, as so appearing, is hereby amended by adding the
68 following paragraph:-

69 If a motion for change of custody is filed during the time a parent is on active military duty, the
70 court shall not enter an order modifying or amending a previous judgment or order, or issue a
71 new order, that changes the child's placement that existed on the date the parent was called to
72 active military duty; provided, however, that the court may enter a temporary custody order if
73 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
74 return from active military duty, the court shall reinstate the custody order in effect immediately
75 preceding that period of active military duty. If a motion for change of custody is filed after a
76 parent returns from active military duty, the court shall not consider a parent's absence due to
77 that military duty in a best interest of the child determination.

78 SECTION 8. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby
79 amended by adding the following paragraph:-

80 If a motion for change of custody is filed during the time a parent is on active military duty, the
81 court shall not enter an order modifying or amending a previous judgment or order, or issue a
82 new order, that changes the child's placement that existed on the date the parent was called to
83 active military duty; provided, however, that the court may enter a temporary custody order if
84 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
85 return from active military duty, the court shall reinstate the custody order in effect immediately
86 preceding that period of active military duty. If a motion for change of custody is filed after a
87 parent returns from active military duty, the court shall not consider a parent's absence due to
88 that military duty in a best interest of the child determination.

89 SECTION 9. Section 37 of said chapter 209, as so appearing, is hereby amended by adding the
90 following paragraph:-

91 If a motion for change of custody is filed during the time a parent is on active military duty, the
92 court shall not enter an order modifying or amending a previous judgment or order, or issue a
93 new order, that changes the child's placement that existed on the date the parent was called to
94 active military duty; provided, however, that the court may enter a temporary custody order if
95 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
96 return from active military duty, the court shall reinstate the custody order in effect immediately
97 preceding that period of active military duty. If a motion for change of custody is filed after a
98 parent returns from active military duty, the court shall not consider a parent's absence due to
99 that military duty in a best interest of the child determination.

100 SECTION 10. Section 2 of chapter 209B of the General Laws, as so appearing, is hereby
101 amended by striking out subsection (e), as so appearing, and inserting in place thereof the
102 following subsection:-

103 (e) If a court of another state has made a custody determination in substantial conformity with
104 this chapter, a court of the commonwealth shall not modify that determination unless (1) it
105 appears to the court of the commonwealth that the court which made the custody determination
106 does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with
107 this chapter or that such court has declined to assume jurisdiction to modify its determination, (2)
108 a court of the commonwealth now has jurisdiction pursuant to this chapter and (3) if a motion for
109 change of custody is filed during the time a parent is on active military duty, the court shall not
110 enter an order modifying or amending a previous judgment or order, or issue a new order, that
111 changes the child's placement that existed on the date the parent was called to active military
112 duty; provided, however, that the court may enter a temporary custody order if there is clear and
113 convincing evidence that it is in the best interest of the child. Upon a parent's return from active
114 military duty, the court shall reinstate the custody order in effect immediately preceding that
115 period of active military duty. If a motion for change of custody is filed after a parent returns
116 from active military duty, the court shall not consider a parent's absence due to that military duty
117 in a best interest of the child determination.

118 SECTION 11. Section 3 of chapter 209C of the General Laws, as so appearing, is hereby
119 amended by adding the following subsection:-

120 (f) If a motion for change of custody is filed during the time a parent is on active military duty,
121 the court shall not enter an order modifying or amending a previous judgment or order, or issue a

122 new order, that changes the child's placement that existed on the date the parent was called to
123 active military duty; provided, however, that the court may enter a temporary custody order if
124 there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's
125 return from active military duty, the court shall reinstate the custody order in effect immediately
126 preceding that period of active military duty. If a motion for change of custody is filed after a
127 parent returns from active military duty, the court shall not consider a parent's absence due to
128 that military duty in a best interest of the child determination.