

**SENATE . . . . . No. 775**

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**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:                   |                  |
|--------------------------------|-------------------------------------|------------------|
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> |                  |
| <i>Jason M. Lewis</i>          | <i>Fifth Middlesex</i>              | <i>2/13/2017</i> |
| <i>Michael J. Barrett</i>      | <i>Third Middlesex</i>              | <i>2/15/2017</i> |

**SENATE . . . . . No. 775**

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By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 775) of William N. Brownsberger, Jason M. Lewis and Michael J. Barrett for legislation relative to determining the best interest of children in probate and family court. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

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 Chapter 208 of the General Laws is amended by striking out section 31, as appearing in  
2 the 2012 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  
8 and 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  
12 responsibility to make major decisions regarding the child’s welfare, including matters of  
13 education, extracurricular activities, medical care, emotional and behavioral development, and  
14 religious development.

15           2.       Residential Responsibility

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

20           b.       “Primary Residential Responsibility.” A child resides with and be under the care  
21 and 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  
28 one 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  
32 parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of  
33 the 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,  
40 section twenty-eight of this chapter, or section thirty-two of chapter two hundred and nine and  
41 until an order or judgment is rendered, absent emergency conditions, abuse, or neglect, the  
42 parents shall have temporary shared legal custody of any minor child of the marriage. Nothing  
43 herein shall be construed to create any presumption of temporary shared residential  
44 responsibility.

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

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

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

54 5. There shall be no presumption either in favor of or against shared decision-  
55 making or shared residential responsibility at the time of the trial, except as provided in section  
56 31A of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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