

SENATE NO. 994

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 edition,
2 is hereby amended in the sixth paragraph by striking the following:.- When considering the happiness
3 and welfare of the child, the court shall consider whether or not the child's present or past living
4 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 the
6 following new paragraph:- In furtherance of the public policy that the happiness and welfare of
7 children is enhanced by frequent and continuing contact with both their parents, upon the filing of an
8 action in accordance with the provisions of this section, section twenty eight of this chapter, or section
9 thirty-two of chapter two hundred and nine, the parents shall have temporary shared legal custody and
10 shared physical custody of any minor child of the parties. In making an order or judgment relative to
11 the custody of a minor child, there shall be a presumption that, absent emergency conditions, or abuse
12 or neglect of said child, the parents shall have shared legal custody and shared physical custody of said
13 child. The judge may enter any order or judgment for sole legal custody for one parent and/or sole

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

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

25 Upon the filing of an action in accordance with the provisions of this section, section twenty-eight
26 of this chapter, or section thirty-two of chapter two hundred and nine and until a judgment on the
27 merits is rendered, absent emergency conditions, abuse or neglect, the parents shall have temporary
28 shared legal custody of any minor child of the marriage; provided, however, that the judge may enter
29 an order for temporary sole legal custody for one parent if written findings are made that such shared
30 custody would not be in the best interest of the child. Nothing herein shall be construed to create any
31 presumption of temporary shared physical custody. In determining whether temporary shared legal
32 custody would not be in the best interest of the child, the court shall consider all relevant facts
33 including, but not limited to, whether any member of the family abuses alcohol or other drugs or has
34 deserted the child and whether the parties have a history of being able and willing to cooperate in
35 matters concerning the child. If, despite the prior or current issuance of a restraining order against one
36 parent pursuant to chapter two hundred and nine A, the court orders shared legal or physical custody

37 either as a temporary order or at a trial on the merits, the court shall provide written findings to support
38 such shared custody order. There shall be no presumption either in favor of or against shared legal or
39 physical custody at the time of the trial on the merits, except as provided for in section 31A.

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

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

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

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

58 SECTION 8. Said section 31 is hereby further amended, in the last paragraph, by striking the
59 words "specific findings are made by the court indicating that such an order would not be in the best

60 interests of the children" and inserting in place thereof the following:- written findings are setting forth
61 the specific facts supporting a determination that the child would be harmed as a result of
62 implementation of the agreement.