HOUSE DOCKET, NO. 1405 FILED ON: 1/20/2011

HOUSE . . . . . No. 1306

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:

An Act relative to shared parenting.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Colleen M. Garry	*36th Middlesex*
Daniel B. Winslow	*9th Norfolk*
Bradley H. Jones, Jr.	*20th Middlesex*
Thomas P. Kennedy	☐ *[District]* ☐
James J. Dwyer	*30th Middlesex*
Chris Walsh	*6th Middlesex*
Anne M. Gobi	*5th Worcester*
Denise Andrews	*2nd Franklin*
Thomas A. Golden, Jr.	*16th Middlesex*
David B. Sullivan	*6th Bristol*
Angelo M. Scaccia	*14th Suffolk*
William N. Brownsberger	☐ *[District]* ☐
John P. Fresolo	*16th Worcester*
Linda Campbell	*15th Essex*

Bruce E. Tarr

[District]

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HOUSE . . . . . No. 1306

By Ms. Garry of Dracut, a petition (accompanied by bill, House, No. 1306) of Colleen M. Garry and others relative to shared parenting in cases of divorce. The Judiciary.

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

The Commonwealth of Massachusetts

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:

SECTION 1. Section 31 of Chapter 208 of the General Laws, as appearing in the most recent edition, is hereby amended in the sixth paragraph by striking the following:.- When considering the happiness and welfare of the child, the court shall consider whether or not the child's present or past living conditions adversely affect his physical, mental, moral or emotional health.

SECTION 2. Said section 31 is hereby further amended by inserting after the sixth paragraph the following new paragraph:- In furtherance of the public policy that the happiness and welfare of children is enhanced by frequent and continuing contact with both their parents, upon the filing of an action in accordance with the provisions of this section, section twenty eight of this chapter, or section thirty-two of chapter two hundred and nine, the parents shall have temporary shared legal custody and shared physical custody of any minor child of the parties. In making an order or judgment relative to the custody of a minor child, there shall be a presumption that, absent emergency conditions, or abuse or neglect of said child, the parents shall have shared legal custody and shared physical custody of said child. The judge may enter any order or judgment for sole legal custody for one parent and/or sole physical custody for one parent if written findings are made setting forth the specific facts supporting a determination that the child would be harmed as a result of shared legal or shared physical custody. In making any order or judgment concerning the parenting schedule of each parent with a minor child, the rights of the parents, absent emergency, abuse, or neglect of one of the parents, shall be held to be

equal, and the Court shall endeavor to maximize the exposure of the child to each of the parents so far as the same is practicable. A change in the availability of one or both parents to parent a minor child, and/or a change in the developmental stage of a minor child, shall be presumed to constitute a material and substantial change in circumstances for the purposes of a complaint or counterclaim seeking to modify a parenting schedule or parenting plan incorporated into a judgment of divorce. Nothing herein shall be deemed to modify the provisions of G.L. c.208, sec. 31A.

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

Upon the filing of an action in accordance with the provisions of this section, section twenty-eight of this chapter, or section thirty-two of chapter two hundred and nine and until a judgment on the merits is rendered, absent emergency conditions, abuse or neglect, the parents shall have temporary shared legal custody of any minor child of the marriage; provided, however, that the judge may enter an order for temporary sole legal custody for one parent if written findings are made that such shared custody would not be in the best interest of the child. Nothing herein shall be construed to create any presumption of temporary shared physical custody.

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

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

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

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

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

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

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

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