

Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)

M.G.L.A. 208 § 19

§ 19. Pendency of action for divorce; custody of children

Currentness

The court may in like manner, upon application of either party or of a next friend in behalf of the minor children of the parties, make such order relative to the care and custody of such children during the pendency of the action for divorce as it may consider expedient and for their benefit.

Credits

Amended by St.1932, c. 3; St.1975, c. 400, § 23.

M.G.L.A. 208 § 19, MA ST 208 § 19
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M.G.L.A. 208 § 22

§ 22. Desertion; proof

Currentness

In order to establish grounds for divorce for desertion, the plaintiff shall establish that the defendant left voluntarily and without justification and with intent not to return, that at the time such defendant left, the plaintiff did not consent thereto, and that the defendant failed to cohabit with the plaintiff for at least one year next prior to the date of the filing of the action. An action for divorce for desertion shall not be defeated by a temporary return or other act of the defendant if the court finds that such return or other act was not made or done in good faith, but with intent to defeat such action. The prior filing of an action for divorce or separate support shall not be deemed to raise a conclusive presumption to defeat an action for divorce for desertion.

Credits

Amended by St.1962, c. 433; St.1974, c. 358, § 2; St.1975, c. 400, § 27.

[Notes of Decisions \(20\)](#)

M.G.L.A. 208 § 22, MA ST 208 § 22
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M.G.L.A. 208 § 28

§ 28. Children; care, custody and maintenance; child support obligations; provisions
for education and health insurance; parents convicted of first degree murder

Effective: July 1, 2012

[Currentness](#)

Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties and may determine with which of the parents the children or any of them shall remain or may award their custody to some third person if it seems expedient or for the benefit of the children. In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines promulgated by the chief justice of the trial court, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice of the trial court or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court

may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree. When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

When a court makes an order for maintenance or support, the court shall determine whether the obligor under such order is responsible for the maintenance or support of any other children of the obligor, even if a court order for such maintenance or support does not exist, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to paid ¹ under the current order for maintenance or support.

No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

Credits

Amended by St.1975, c. 400, § 29; St.1975, c. 661, § 1; St.1976, c. 279, § 1; St.1983, c. 233, § 76; St.1985, c. 490, § 1; St.1988, c. 23, § 66; St.1991, c. 173, § 1; St.1993, c. 460, §§ 60 to 62; St.1997, c. 77, § 2; St.1998, c. 64, §§ 194, 195; St.2011, c. 93, § 37, eff. July 1, 2012.

Notes of Decisions (519)

Footnotes

¹ So in enrolled bill.

M.G.L.A. 208 § 28, MA ST 208 § 28

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M.G.L.A. 208 § 28A

§ 28A. Temporary care; custody and maintenance of minor children

Currentness

During the pendency of an action seeking a modification of a judgment for divorce, upon motion of either party or of a next friend on behalf of the minor children of the parties and notice to the other party or parties, the court may make temporary orders relative to the care, custody and maintenance of such children. Every order entered relative to care and custody shall include specific findings of fact made by the court which clearly demonstrate the injury, harm or damage that might reasonably be expected to occur if relief pending a judgment of modification is not granted. An order entered relative to care and custody, pursuant to this section, may only be entered without advance notice if the court finds that an emergency exists, the nature of which requires the court to act before the opposing party or parties can be heard in opposition. In all such cases, such order shall be for a period not to exceed five days and written notice of the issuance of any such order and the reasons therefor shall be given to the opposing party or parties together with notice of the date, time and place that a hearing on the continuation of such order will be held.

Credits

Added by St.1985, c. 490, § 2. Amended by [St.1993, c. 460, § 63](#).

M.G.L.A. 208 § 28A, MA ST 208 § 28A
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M.G.L.A. 208 § 29

§ 29. Minor children; foreign divorces, care and custody

[Currentness](#)

If, after a divorce has been adjudged in another jurisdiction, minor children of the marriage are inhabitants of, or residents in this commonwealth, the probate court for the county in which said minors or any of them are inhabitants or residents, upon an action of either parent or of a next friend in behalf of the children, after notice to both parents, shall have the same power to make judgments relative to their care, custody, education and maintenance, and to revise and alter such judgments or make new judgments, as if the divorce had been adjudged in this commonwealth.

Credits

Amended by St.1975, c. 400, § 30; St.1986, c. 462, § 8.

[Notes of Decisions \(41\)](#)

M.G.L.A. 208 § 29, MA ST 208 § 29
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M.G.L.A. 208 § 30

§ 30. Minor children; removal from commonwealth; prohibition

[Currentness](#)

A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance a probate court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such child, may require security and issue writs and processes to effect the purposes of this and the two preceding sections.

Credits

Amended by St.1986, c. 462, § 9.

[Notes of Decisions \(121\)](#)

M.G.L.A. 208 § 30, MA ST 208 § 30
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M.G.L.A. 208 § 31

§ 31. Custody of children; shared custody plans

Currentness

For the purposes of this section, the following words shall have the following meaning unless the context requires otherwise:

“Sole legal custody”, one parent shall have the right and responsibility to make major decisions regarding the child's welfare including matters of education, medical care and emotional, moral and religious development.

“Shared legal custody”, continued mutual responsibility and involvement by both parents in major decisions regarding the child's welfare including matters of education, medical care and emotional, moral and religious development.

“Sole physical custody”, a child shall reside with and be under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that such visitation would not be in the best interest of the child.

“Shared physical custody”, a child shall have periods of residing with and being under the supervision of each parent; provided, however, that physical custody shall be shared by the parents in such a way as to assure a child frequent and continued contact with both parents.

In making an order or judgment relative to the custody of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody. 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.

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.

At the trial on the merits, if the issue of custody is contested and either party seeks shared legal or physical custody, the parties, jointly or individually, shall submit to the court at the trial a shared custody implementation plan setting forth the details of shared custody including, but not limited to, the child's education; the child's health care; procedures for resolving disputes between the parties with respect to child-raising decisions and duties; and the periods of time during which each party will have the child reside or visit with him, including holidays and vacations, or the procedure by which such periods of time shall be determined.

At the trial on the merits, the court shall consider the shared custody implementation plans submitted by the parties. The court may issue a shared legal and physical custody order and, in conjunction therewith, may accept the shared custody implementation plan submitted by either party or by the parties jointly or may issue a plan modifying the plan or plans submitted by the parties. The court may also reject the plan and issue a sole legal and physical custody award to either parent. A shared custody implementation plan issued or accepted by the court shall become part of the judgment in the action, together with any other appropriate custody orders and orders regarding the responsibility of the parties for the support of the child.

Provisions regarding shared custody contained in an agreement executed by the parties and submitted to the court for its approval that addresses the details of shared custody shall be deemed to constitute a shared custody implementation plan for purposes of this section.

An award of shared legal or physical custody shall not affect a parent's responsibility for child support. An order of shared custody shall not constitute grounds for modifying a support order absent demonstrated economic impact that is an otherwise sufficient basis warranting modification.

The entry of an order or judgment relative to the custody of minor children shall not negate or impede the ability of the non-custodial parent to have access to the academic, medical, hospital or other health records of the child, as he would have had if the custody order or judgment had not been entered; provided, however, that if a court has issued an order to vacate against the non-custodial parent or an order prohibiting the non-custodial parent from imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the present or prior address of the child or a party is necessary to ensure the health, safety or welfare of such child or party, the court may order that any part of such record pertaining to such address shall not be disclosed to such non-custodial parent.

Where the parents have reached an agreement providing for the custody of the children, the court may enter an order in accordance with such agreement, unless specific findings are made by the court indicating that such an order would not be in the best interests of the children.

Credits

Amended by St.1975, c. 400, § 31, as amended by St.1977, c. 829, § 12; St.1977, c. 238; St.1981, c. 299; St.1982, c. 252; St.1983, c. 695; St.1986, c. 480; [St.1989, c. 689](#); [St.1998, c. 179, §§ 1, 2](#).

[Notes of Decisions \(136\)](#)

M.G.L.A. 208 § 31, MA ST 208 § 31

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M.G.L.A. 208 § 31A

§ 31A. Visitation and custody orders; consideration of abuse toward parent or child; best interest of child

Currentness

In issuing any temporary or permanent custody order, the probate and family court shall consider evidence of past or present abuse toward a parent or child as a factor contrary to the best interest of the child. For the purposes of this section, “abuse” shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing bodily injury; or (b) placing another in reasonable fear of imminent bodily injury. “Serious incident of abuse” shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing serious bodily injury; (b) placing another in reasonable fear of imminent serious bodily injury; or (c) causing another to engage involuntarily in sexual relations by force, threat or duress. For purposes of this section, “bodily injury” and “serious bodily injury” shall have the same meanings as provided in [section 13K of chapter 265](#).

A probate and family court’s finding, by a preponderance of the evidence, that a pattern or serious incident of abuse has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, “an abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse.

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child’s best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent, the court shall provide for the safety and well-being of the child and the safety of the abused parent. The court may consider:

- (a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;
- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;

(c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;

(d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;

(e) ordering the abusive parent to pay the costs of supervised visitation;

(f) prohibiting overnight visitation;

(g) requiring a bond from the abusive parent for the return and safety of the child;

(h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and

(i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearings.

Credits

Added by [St.1998, c. 179, § 3](#).

[Notes of Decisions \(3\)](#)

M.G.L.A. 208 § 31A, MA ST 208 § 31A

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Chapter 208. Divorce (Refs & Annos)

M.G.L.A. 208 § 32

§ 32. Child; bringing before court; writ of habeas corpus

[Currentness](#)

Any court having jurisdiction of actions for divorce or nullity of marriage, separate support, or maintenance, or of any other proceeding in which the care and custody of any child is drawn in question, may issue a writ of habeas corpus to bring before it such child. The writ may be made returnable forthwith before the court by which it is issued, and, upon its return, said court may make any appropriate order or judgment relative to the child who may thus be brought before it.

Credits

Amended by St.1975, c. 400, § 32.

[Notes of Decisions \(3\)](#)

M.G.L.A. 208 § 32, MA ST 208 § 32
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Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
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Chapter 209C. Children Born Out of Wedlock (Refs & Annos)

M.G.L.A. 209C § 10

§ 10. Award of custody; criteria

Currentness

(a) Upon or after an adjudication or voluntary acknowledgment of paternity, the court may award custody to the mother or the father or to them jointly or to another suitable person as hereafter further specified as may be appropriate in the best interests of the child.

In awarding custody to one of the parents, the court shall, to the extent possible, preserve the relationship between the child and the primary caretaker parent. The court shall also consider where and with whom the child has resided within the six months immediately preceding proceedings pursuant to this chapter and whether one or both of the parents has established a personal and parental relationship with the child or has exercised parental responsibility in the best interests of the child.

In awarding the parents joint custody, the court shall do so only if the parents have entered into an agreement pursuant to section eleven or the court finds that the parents have successfully exercised joint responsibility for the child prior to the commencement of proceedings pursuant to this chapter and have the ability to communicate and plan with each other concerning the child's best interests.

(b) Prior to or in the absence of an adjudication or voluntary acknowledgment of paternity, the mother shall have custody of a child born out of wedlock. In the absence of an order or judgment of a probate and family court relative to custody, the mother shall continue to have custody of a child after an adjudication of paternity or voluntary acknowledgment of parentage.

(c) If either parent is dead, unfit or unavailable or relinquishes care of the child or abandons the child and the other parent is fit to have custody, that parent shall be entitled to custody.

(d) If a person who is not a parent of the child requests custody, the court may order custody to that person if it is in the best interests of the child and if the written consent of both parents or the surviving parent is filed with the court. Such custody may also be ordered if it is in the best interests of the child and if both parents or the surviving parent are unfit to have custody or if one is unfit and the other files his written consent in court.

(e) In issuing any temporary or permanent custody order, the probate and family court shall consider evidence of past or present abuse toward a parent or child as a factor contrary to the best interest of the child. For the purposes of this section, "abuse" shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing bodily injury; or (b) placing another in reasonable fear of imminent bodily injury. "Serious incident of abuse" shall mean the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing serious bodily injury; (b) placing another in reasonable fear of imminent serious bodily injury; or (c) causing another to engage involuntarily in sexual relations by force, threat or

duress. For purposes of this section, “bodily injury” and “serious bodily injury” shall have the same meanings as provided in [section 13K of chapter 265](#).

A probate and family court's finding by a preponderance of the evidence, that a pattern or serious incident of abuse has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody, or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an “abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse.

For the purposes of this section, the issuance of an order or orders under chapter 209A shall not in and of itself constitute a pattern or serious incident of abuse; nor shall an order or orders entered ex parte under said chapter 209A be admissible to show whether a pattern or serious incident of abuse has in fact occurred; provided, however, that an order or orders entered ex parte under said chapter 209A may be admissible for other purposes as the court may determine, other than showing whether a pattern or serious incident of abuse has in fact occurred; provided further, that the underlying facts upon which an order or orders under said chapter 209A was based may also form the basis for a finding by the probate and family court that a pattern or serious incident of abuse has occurred.

If the court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the court shall within 90 days enter written findings of fact as to the effects of the abuse on the child, which findings demonstrate that such order is in the furtherance of the child's best interests and provides for the safety and well-being of the child.

If ordering visitation to the abusive parent the court shall provide for the safety and well-being of the child, and the safety of the abused parent. The court may consider:

- (a) ordering an exchange of the child to occur in a protected setting or in the presence of an appropriate third party;
- (b) ordering visitation supervised by an appropriate third party, visitation center or agency;
- (c) ordering the abusive parent to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of visitation;
- (d) ordering the abusive parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding visitation;
- (e) ordering the abusive parent to pay the costs of supervised visitation;
- (f) prohibiting overnight visitation;
- (g) requiring a bond from the abusive parent for the return and safety of the child;
- (h) ordering an investigation or appointment of a guardian ad litem or attorney for the child; and

(i) imposing any other condition that is deemed necessary to provide for the safety and well-being of the child and the safety of the abused parent.

Nothing in this section shall be construed to affect the right of the parties to a hearing under the rules of domestic relations procedure or to affect the discretion of the probate and family court in the conduct of such hearing.

Credits

Added by St.1986, c. 310, § 16. Amended by [St.1993, c. 460, § 76](#); [St.1998, c. 179, § 6](#).

[Notes of Decisions \(39\)](#)

M.G.L.A. 209C § 10, MA ST 209C § 10

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Chapter 209C. Children Born Out of Wedlock (Refs & Annos)

M.G.L.A. 209C § 11

§ 11. Acknowledgment of parentage; approval; parental agreements regarding custody, support and visitation

Effective: July 8, 2008

[Currentness](#)

(a) A written voluntary acknowledgment of parentage executed jointly by the putative father, whether a minor or not, and the mother of the child, whether a minor or not, and filed with the registrar of vital records and statistics or with the court shall be recognized as a sufficient basis for seeking an order of support, visitation or custody with respect to the child without further proceedings to establish paternity, and no judicial proceeding shall be required or permitted to ratify an acknowledgment that has not been challenged pursuant to this section. A report, prepared on an electronic system of birth registration approved by the commissioner of public health and indicating that an acknowledgment pursuant to this chapter has been executed in accordance with [section 3C of chapter 46](#) and filed with the registrar of vital records and statistics, shall be presumed to be a sufficient basis for seeking an order of support, visitation or custody without further proceedings to establish paternity. The voluntary acknowledgment shall be attested to before a notary public and shall have the legal effect as provided in this section. Unless either signatory rescinds the acknowledgment within 60 days of the date of signing as provided in this section, the acknowledgment shall establish paternity as of the date it has been signed by such putative father and mother and shall have the same force and effect as a judgment of paternity, subject to challenge within one year only on the basis of fraud, duress or material mistake of fact; provided, however, that if, prior to the expiration of the 60-day period, the signatory is a party to an administrative or judicial proceeding related to the child, including a proceeding to establish child support, visitation or custody, and fails to rescind the acknowledgment at the time of such proceeding, the acknowledgment shall thereafter have the same force and effect as a judgment, subject to challenge only as provided in this section. The person seeking to rescind the acknowledgment shall, within 60 days of signing the acknowledgment, file a petition in the probate and family court in the county in which the child and one of the parents resides seeking to rescind the acknowledgment, with notice to the other parent. If neither of the parents lives in the same county as the child, then such complaint shall be filed in the county where the child lives. If the child whose paternity is challenged is a recipient of public assistance and the department of transitional assistance, the department of children and families, the division of medical assistance or any other public assistance program has not been made a party, or if the child is receiving child support enforcement services from the IV-D agency pursuant to chapter 119A, the court shall notify the IV-D agency. The person seeking to rescind the acknowledgment shall bear the burden of proof in such proceeding. The responsibilities of a signatory arising from the acknowledgment shall not be suspended during the pendency of such challenge unless the court so orders for good cause shown. If either party rescinds the acknowledgment in a timely fashion, the court shall order genetic marker testing and proceed to adjudicate paternity or nonpaternity in accordance with this chapter; provided, however, that the rescinded acknowledgment shall constitute the proper showing required for an order to submit to such testing; and provided further, that the rescinded acknowledgment shall be admissible as evidence of the putative father's paternity and shall serve as sufficient basis for admitting the report of the results of genetic marker tests. Upon adjudication of nonpaternity, the court shall instruct the registrar of vital records and statistics as provided in [section 13 of chapter 46](#) to amend the birth record of the child in accordance with the order of the court.

(b) If a mother and father execute a voluntary acknowledgment of parentage as provided in (a), they may also make agreements regarding custody, support and visitation. Such agreements may be filed with any court with jurisdiction pursuant to this chapter; provided, that any such agreement which includes issues of custody or visitation must be filed with a division of the probate

and family court department in the judicial district or county in which the child and one of the parents lives. Such agreements, if filed with and approved by the court shall have the same force and effect as a judgment of the court; provided, however, that the court shall have the same power to investigate the facts regarding custody, support and visitation prior to entering an order relative to those issues as it would have if no agreement had been filed; and provided further, that an agreement regarding custody and visitation shall be approved only if the court finds it to be in the best interests of the child.

(c) Voluntary acknowledgments and agreements made pursuant to this chapter shall be acknowledged in the presence of a notary public and shall include the residence addresses and social security numbers of each of the parents, the residence address of the child and, if available, the social security number of the child.

(d) A voluntary acknowledgment of parentage taken outside of the commonwealth shall be valid for the purposes of this section if it was taken in accordance with the laws of the state or the country where it was executed.

Credits

Added by St.1986, c. 310, § 16. Amended by St.1993, c. 460, §§ 77, 78; St.1995, c. 38, §§ 169 to 172; St.1998, c. 64, §§ 227, 228; St.2008, c. 176, § 113, eff. July 8, 2008.

[Notes of Decisions \(6\)](#)

M.G.L.A. 209C § 11, MA ST 209C § 11

Current through Chapter 29 of the 2013 1st Annual Session

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