

Massachusetts

TRACEY BEE, THE DIVORCE SOLUTIONIST



Types of Custody in Massachusetts

Massachusetts custody laws break custody into two categories: legal custody and physical custody. Legal custody refers to a parent's authority to participate in major decisions regarding a child's education, health care, and emotional, moral, or religious development.

Physical custody refers to the time that a child is residing with or is under the care and supervision of a parent.

Sole or legal

The court can award sole or joint legal or physical custody or a combination of both. In Massachusetts, the court refers to "joint" custody as "shared" custody. Shared legal custody means that both parents are mutually responsible for and can take part in making decisions regarding the child's welfare, including matters concerning education, medical care, and emotional, moral, and religious development. Shared physical custody means that a child will reside with both parents, ensuring frequent and continued contact with each parent.

It's common for parents to share legal custody while one parent remains the primary custodial parent. If the court awards one parent physical custody, the judge will create a parenting time (visitation) schedule for the other parent to ensure the child and parent can continue developing a quality relationship. Shared physical custody does not necessarily require an equal division of time between parents, so the judge will approve any parenting schedule that works for the family if it meets the child's needs

The Best Interests of the Child Standard in Massachusetts

A judge making a custody determination in a Massachusetts divorce case will be guided by the best interests of the children involved. The law requires judges to base custody on the needs of the children, and neither parent begins with any greater right to custody than the other. Massachusetts law does not list specific factors to be considered in determining a child's best interests, allowing judges a great deal of discretion in making decisions.

The children's welfare and happiness are the main concerns when making custody decisions, and a court must take into account any adverse effects a child's present or past living conditions may have had on the child's physical, mental, moral, or emotional health. (Mass. Gen. Laws ch. 208 §31.)

Additionally, the judge may consider:

- each parent's ability to provide the child with food, clothing, shelter, and any other necessities
- the child's relationship with each parent
- the child's home, school, and community record
- whether the parents have a history of domestic abuse or child neglect
- each parent's willingness to foster a frequent, continuing, and quality relationship between the child and the other parent
- both parents' moral fitness
- each parent's physical and mental health, and
- any other factor the judge deems relevant on a case-by-case basis.

Massachusetts Custody and Visitation Options

A Massachusetts court will order temporary joint legal custody at the beginning of a divorce case unless the facts demonstrate that this would not be in a child's best interests. Some facts that would support a temporary award of sole legal custody rather than joint legal custody would be one parent's abandonment of the child or abuse of alcohol or drugs or the inability of the parents to cooperate in matters affecting the child. Except for the initial temporary award of shared legal custody, there is no presumption in favor of joint legal or physical custody. There is, however, a presumption against awarding sole or joint legal or physical custody to an abusive parent. The court considers a parent to be abusive if the parent has repeatedly caused, attempted to cause, or made serious threats of causing bodily injury to either the child or the other parent. A single instance of such behavior is sufficient if the actual or threatened injury is serious or if there has been a sexual assault. (Mass. Gen. Laws ch. 208 §31.)



Leading Case Law in Best Interest of a Child.

Adoption of Ilona, 944 NE 2d 115 - Mass: Supreme Judicial Court
Ardizoni v. Raymond , 40 Mass. App. Ct. 734 (1996)
Blixt v. Blixt, 437 Mass. 649, 657-658 (2002)

Rules Governing Conduct of Judges.

<https://www.mass.gov/doc/massachusetts-supreme-judicial-court-rules-and-orders/download>
<https://www.mass.gov/supreme-judicial-court-rules/canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently>
<https://www.mass.gov/service-details/massachusetts-code-of-judicial-conduct>

Attorney Ethics

<https://www.mass.gov/guides/massachusetts-rules-of-professional-conduct>

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Modification of Custody in Massachusetts

As with any custody-related issue, it's always best for parents to try and work together to determine what schedule works best for both parents and the children. If, however, you're unable to agree, the court will consider your motion to modify custody if you can prove both of the following factors exist:

- since the last order, there is a material and substantial change of circumstances of the parents or child, and
- a modification is necessary to serve the child's best interests. (Mass. Gen. Laws ch. 208 §28.)

MGL c.119A, § 13 Limits on retroactive modification

MGL c.208, § 28 Modification of

Massachusetts judgments concerning care, custody and maintenance of children

MGL c. 208, § 28A Temporary orders concerning care, custody and maintenance of children when modification is pending

MGL c. 208, § 29 Modification of foreign judgments concerning care, custody and maintenance of children

MGL c. 208, § 37 Modification of Massachusetts and foreign alimony judgments

MGL c. 209D, §§ 6-601-6-612 Uniform Interstate Family Support Act - enforcement and modification of support order after registration

Guardian ad Litem

In Massachusetts, GALs are appointed by probate and family court judges from among those who have experience representing parties in custody and visitation cases. GALs investigate facts in cases involving the care and custody of minor children and other matters that implicate children's interests or rights. A GAL is generally appointed in cases that raise questions about:

1. custody and visitation,
 2. a custodial parent's request to move with the child out-of-state,
 3. changes in circumstances that might warrant modification of a court order,
 4. the existence of a parent-child relationship,
 5. paternity,
 6. termination of parental rights, or
 7. other matters that implicate the interests or rights of children
- (Mass. GL c. 215 § 56A; GL c 208 § 16)

Recusal of Judges

Any motion seeking to recuse a Justice of this court from a full court case shall be in writing, and shall comply in all respects with Mass. R. A. P. 15 (a). The motion shall be filed at or before the time for filing the moving party's brief. The court may allow the filing of a motion to recuse after the filing of the brief if the motion is based on grounds not known, and that reasonably could not have been known, at the time the brief was filed, and provided that the motion is filed as soon as practicable after the alleged ground for recusal becomes known. Late filed motions are strongly discouraged.

If the motion is denied by the Justice whose recusal is sought, the moving party may request review of that ruling by the other Justices, by filing with the clerk, within seven days of the ruling, a written request for review. To facilitate this review, a Justice who denies a motion to recuse is encouraged to provide a brief statement of his or her reasons for the ruling.

The review shall be on the papers, and limited to the information that was before the Justice whose recusal was sought, unless the court requests further information. A party requesting review shall therefore file, along with the request for review, eight copies of the motion to recuse and all material related to the motion that was before the Justice initially, including any supporting or opposing memoranda and affidavits. The Justices reviewing the ruling will act as soon as practicable, and, time permitting, before oral argument or submission of the case on briefs.



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