

# Massachusetts Divorce Laws

## TITLE III. DOMESTIC RELATIONS

### CHAPTER 208. DIVORCE.

#### CAUSES FOR DIVORCE.

##### Chapter 208: Section 1 General provisions

**Section 1.** A divorce from the bond of matrimony may be adjudged for adultery, impotency, utter desertion continued for one year next prior to the filing of the complaint, gross and confirmed habits of intoxication caused by voluntary and excessive use of intoxicating liquor, opium, or other drugs, cruel and abusive treatment, or, if a spouse being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable support and maintenance for the other spouse, or for an irretrievable breakdown of the marriage as provided in sections one A and B; provided, however, that a divorce shall be adjudged although both parties have cause, and no defense upon recrimination shall be entertained by the court.

##### Chapter 208: Section 1A Irretrievable breakdown of marriage; commencement of action; complaint accompanied by statement and dissolution agreement; procedure

**Section 1A.** An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced with the filing of: (a) a petition signed by both joint petitioners or their attorneys; (b) a sworn affidavit that is either jointly or separately executed by the petitioners that an irretrievable breakdown of the marriage exists; and (c) a notarized separation agreement executed by the parties except as hereinafter set forth and no summons or answer shall be required. After a hearing on a separation agreement which has been presented to the court, the court shall, within thirty days of said hearing, make a finding as to whether or not an irretrievable breakdown of the marriage exists and whether or not the agreement has made proper provisions for custody, for support and maintenance, for alimony and for the disposition of marital property, where applicable. In making its finding, the court shall apply the provisions of section thirty-four, except that the court shall make no inquiry into, nor consider any evidence of the individual marital fault of the parties. In the event the notarized separation agreement has not been filed at the time of the commencement of the action, it shall in any event be filed with the court within ninety days following the commencement of said action.

If the finding is in the affirmative, the court shall approve the agreement and enter a judgment of divorce nisi. The agreement either shall be incorporated and merged into said judgment or by agreement of the parties, it shall be incorporated and not merged, but shall survive and remain as an independent contract. In the event that the court does not approve the agreement as executed, or modified by agreement of the parties, said agreement shall become null and void and of no further effect between the parties; and the action shall be treated as dismissed, but without prejudice. Following approval of an agreement by the court but prior to the entry of judgment nisi, said agreement may be modified in accordance with the foregoing provisions at any time by agreement of the parties and with the approval of the court, or by the court upon the petition of one of the parties after a showing of a substantial change of circumstances; and the agreement, as modified, shall continue as the order of the court.

Thirty days from the time that the court has given its initial approval to a dissolution agreement of the parties which makes proper provisions for custody, support and maintenance, alimony, and for the disposition of marital property, where applicable, notwithstanding subsequent modification of said agreement, a judgment of divorce nisi shall be entered without further action by the parties.

Nothing in the foregoing shall prevent the court, at any time prior to the approval of the agreement by the court, from making temporary orders for custody, support and maintenance, or such other temporary orders as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.

Prior to the entry of judgment under this section, the petition may be withdrawn by mutual agreement of the parties.

An action commenced under this section shall be placed by the register of probate for the county in which the action is so commenced on a hearing list separate from that for all other actions for divorce brought under this chapter, and shall be given a speedy hearing on the dissolution agreement insofar as that is consistent with the wishes of the parties.

**Chapter 208: Section 1B Irretrievable breakdown of marriage; commencement of action; waiting period; unaccompanied complaint; procedure**

**Section 1B.** An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced by the filing of the complaint unaccompanied by the signed statement and dissolution agreement of the parties required in section one A.

No earlier than six months after the filing of the complaint, there shall be a hearing and the court may enter a judgment of divorce nisi if the court finds that there has existed, for the period following the filing of the complaint and up to the date of the hearing, a continuing irretrievable breakdown of the marriage.

Notwithstanding the foregoing, at the election of the court hereunder, the aforesaid six month period may be waived to allow the consolidation for the purposes of hearing a complaint commenced under this section with a complaint for divorce commenced by the opposing party under section one.

The filing of a complaint for divorce under this section shall not affect the ability of the defendant to obtain a hearing on a complaint for divorce filed under section one, even if the aforesaid six month period has not yet expired.

Said six month period shall be determined from the filing of a complaint for divorce. In the event that a complaint for divorce is commenced in accordance with the provisions of section one A or is for a cause set forth under section one, and said complaint is later amended to set forth the ground established in this section, the six month period herein set forth shall be computed from the date of the filing of said complaint.

As part of the entry of the judgment of divorce nisi, appropriate orders shall be made by the court with respect to custody, support and maintenance of children, and, in accordance with the provisions of section thirty-four, for alimony and for the disposition of marital property.

Nothing in the foregoing shall prevent the court, at any time prior to judgment, from making temporary orders for custody, support and maintenance or such other temporary orders as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.

Prior to the entry of judgment under this section, in the event that the parties file the statement and dissolution agreement as required under section one A hereinabove, then said action for divorce shall proceed under said section one A.

**Chapter 208: Section 2 Confinement for crime**

**Section 2.** A divorce may also be adjudged if either party has been sentenced to confinement for life or for five years or more in a federal penal institution or in a penal or reformatory institution in this or any other state; and, after a divorce for such cause, no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights.

**Chapter 208: Section 3 Absence; presumption of death**

**Section 3.** A divorce may be adjudged for any of the causes allowed by sections one, one B, or two although the defendant has been continuously absent for such time and under such circumstances as would raise a presumption of death.

**Chapter 208: Section 4 Domicile of parties**

**Section 4.** A divorce shall not, except as provided in the following section, be adjudged if the parties have never lived together as husband and wife in this commonwealth; nor for a cause which occurred in another jurisdiction, unless before such cause occurred the parties had lived together as husband and wife in this commonwealth, and one of them lived in this commonwealth at the time when the cause occurred.

**Chapter 208: Section 5 Exceptions**

**Section 5.** If the plaintiff has lived in this commonwealth for one year last preceding the commencement of the action if the cause occurred without the commonwealth, or if the plaintiff is domiciled within the commonwealth at the time of the commencement of the action and the cause occurred within the commonwealth, a divorce may be adjudged for any cause allowed by law, unless it appears that the plaintiff has removed into this commonwealth for the purpose of obtaining a divorce.

## **LIBELS FOR DIVORCE.**

### **Chapter 208: Section 6 Venue**

**Section 6.** Actions for divorce shall be filed, heard and determined in the probate court, held for the county where one of the parties lives, except that if either party still resides in the county where the parties last lived together, the action shall be heard and determined in a court for that county. In the event of hardship or inconvenience to either party, the court having jurisdiction may transfer such action for hearing to a court in a county in which such party resides.

## **LIBELS FOR DIVORCE**

### **Chapter 208: Section 6B Filing of action; statistical report**

**Section 6B.** An action for divorce shall be commenced in probate court by the filing of a complaint. Said complaint shall be accompanied by a statistical report, upon a form prepared by the commissioner of public health and made available through the office of the register of probate, to include the name, residence, date of birth and social security number of each of the parties, the name of the plaintiff, the number of times each of the parties had been married before, if any, the date of the marriage being dissolved, the number of children born of such marriage, if any, the name and date of birth of each such child, the number of minor children in the care and custody of the parties, if any, and such additional information as the commissioner of public health deems useful for statistical and research purposes. The state registrar may make such information available to the IV-D agency as set forth in chapter 119A and such other state or federal agencies as may be required by law.

### **Chapter 208: Section 8 Commencement of actions**

**Section 8.** Actions for divorce in the probate courts shall be commenced in accordance with the Massachusetts Rules of Civil Procedure applicable to domestic relations procedure.

### **Chapter 208: Section 11 Ex parte hearing; allowance or denial of motion to insert name of third person**

**Section 11.** The evidence produced at such ex parte hearing shall not be reported or made a part of the record in the case and the motion for said amendment shall not be read in open court during the proceedings, but the register of probate shall make an entry in the docket of ""Motion to insert name of third person allowed" or ""Motion to insert name of third person denied", as the case may be. If the amendment is allowed upon affidavits, they shall be retained in the court and placed in the custody of the register, and shall be open for the purposes of inspection, and taking copies thereof, to counsel of record, the parties or the third person named in the amendment.

### **Chapter 208: Section 12 Spouse's property; attachment**

**Section 12.** Upon an action for divorce by either spouse for a cause accruing after marriage, the real and personal property of the other spouse may be attached to secure suitable support and maintenance to the plaintiff and to such children as may be committed to his care and custody.

### **Chapter 208: Section 13 Attachment; manner**

**Section 13.** The attachment may be made upon the summons issued upon the action, in the same manner as attachments are made upon writs in actions at law, for an amount which shall be expressed in the summons or order of notice. The attachment may be made by trustee process, in

which case there shall be inserted in the summons or order of notice a direction to attach the goods, effects and credits of the defendant in the hands of the alleged trustee, and service shall be made upon the trustee by copy. If attachment is made by trustee process, the action shall be filed as provided in section six notwithstanding the provisions of section two of chapter two hundred and forty-six. The court may in such cases make all necessary orders to secure to the trustee his costs. The attachment may be made by injunction, as in suits in equity, to reach shares of stock or other property which cannot be reached to be attached as in an action at law, and the property so attached may thereafter, by appropriate order, be applied to the satisfaction of any order or decree for the payment of money by one spouse to the other for his support and maintenance or that of the children.

**Chapter 208: Section 14 Attachments; laws applicable**

**Section 14.** The laws relative to attachments of real or personal property shall apply to attachments herein provided for, so far as they are consistent with the two preceding sections.

**Chapter 208: Section 15 Mentally ill defendant; appointment and compensation of guardian**

**Section 15.** If during the pendency of an action for divorce the defendant is incapacitated by reason of mental illness, the court shall appoint a suitable guardian to appear and answer in like manner as a guardian for an infant defendant in any civil action may be appointed. The compensation of such guardian shall be determined by the court, and, together with his necessary expenses, shall be paid by the plaintiff if the court so orders.

**Chapter 208: Section 16 Investigation of divorce case**

**Section 16.** Any judge of a probate court wherein any action for divorce is pending may appoint an attorney to investigate and report to the court in relation thereto and may direct such attorney, or any other attorney, to defend the action. The attorney may be appointed either before or after a judgment of divorce nisi has been granted, and may enter objections to such judgment nisi becoming absolute in the same manner as the defendant. His compensation shall be fixed by the court, and shall be paid by the commonwealth, together with any expenses approved by the court, upon certificate by a justice to the state treasurer. The state police, local police and probation officers shall assist the attorneys so appointed, upon his request.

**Chapter 208: Section 17 Pendency of action; allowance; alimony**

**Section 17.** The court may require either party to pay into court for the use of the other party during the pendency of the action an amount to enable him to maintain or defend the action, and to pay to him alimony during the pendency of the action. When the court makes an order for alimony on behalf of a party, and such party is not a member of a private group health insurance plan, the court shall include in such order for alimony a provision relating to health insurance, which provision shall be in accordance with section thirty-four.

**Chapter 208: Section 18 Pendency of action for divorce; protection of personal liberty of spouse; restraint orders authorized**

**Section 18.** The probate court in which the action for divorce is pending may, upon petition of the wife, prohibit the husband, or upon petition of the husband, prohibit the wife from imposing any restraint upon her or his personal liberty during the pendency of the action for divorce. Upon the petition of the husband or wife or the guardian of either, the court may make such further order as it deems necessary to protect either party or their children, to preserve the peace or to carry out the purposes of this section relative to restraint on personal liberty.

**Chapter 208: Section 19 Pendency of action for divorce; custody of children**

**Section 19.** 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.

**Chapter 208: Section 20 Continuance of action; temporary separation**

**Section 20.** The court may, without entering a judgment of divorce, order the action continued upon the docket from time to time, and during such continuance may make orders relative to a temporary separation of the parties, the separate maintenance of either spouse and the custody and support of minor children. Such orders may be changed or annulled as the court may determine, and shall, while they are in force, supersede any order of the probate court under section thirty-two of chapter two hundred and nine and may suspend the right of said court to act under said section. When the court makes an order for maintenance of a spouse or support of a minor child, and such spouse or child is not a member of a private group health insurance plan, the court shall include in such order a provision relating to health insurance, which provision shall be in accordance with section thirty-four.

**Chapter 208: Section 20A Judgment denying divorce; living apart for justifiable cause; authorization**

**Section 20A.** If, after a hearing, the allegations of an action for divorce are not sustained, the court may, if the facts warrant, enter a judgment denying the divorce and making a finding that the plaintiff is living apart from the defendant for justifiable cause, and may make such order relative to the support of either spouse and the care, custody of and maintenance of the minor children of the parties as the circumstances require. The various provisions of chapter two hundred and nine which relate to proceedings commenced under section thirty-two thereof shall be applicable to this section.

**Chapter 208: Section 21 Divorce judgments; entry**

**Section 21.** Judgments of divorce shall in the first instance be judgments nisi, and shall become absolute after the expiration of ninety days from the entry thereof, unless the court within said period, for sufficient cause, upon application of any party to the action, otherwise orders. After the entry of a judgment nisi, the action shall not be dismissed or discontinued on motion of either party except upon such terms, if any, as the court may order after notice to the other party and a hearing, unless there has been filed with the court a memorandum signed by both parties, wherein they agree to such disposition of the action.

**Chapter 208: Section 22 Desertion; proof**

**Section 22.** 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.

**GENERAL PROVISIONS.**

**Chapter 208: Section 23 Resumption of former name by woman**

**Section 23.** The court granting a divorce may allow a woman to resume her maiden name or that of a former husband.

**Chapter 208: Section 24 Divorced parties; remarriage**

**Section 24.** After a judgment of divorce has become absolute, either party may marry again as if the other were dead.

## **Chapter 208: Section 24A Certificate of divorce; contents**

**Section 24A.** The court, in issuing a copy of, or a certificate relating to, a decree of divorce entered by it, shall cause to be printed or written thereon the provisions of sections twenty-one and twenty-four.

## **Chapter 208: Section 25 Divorce for adultery of wife; legitimacy of issue**

**Section 25.** A divorce for adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but such legitimacy, if questioned, shall be tried and determined according to the course of the common law.

## **Chapter 208: Section 27 Curtesy or dower after divorce**

**Section 27.** After a divorce, a husband or wife shall not be entitled to curtesy or dower in the land of the other spouse.

## **Chapter 208: Section 28 Children; care, custody and maintenance; child support obligations; provisions for education and health insurance; parents convicted of first degree murder**

**Section 28.** 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 for administration and management, 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 for administration and management 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 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.

#### **Chapter 208: Section 28A Temporary care; custody and maintenance of minor children**

**Section 28A.** 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.

#### **Chapter 208: Section 29 Minor children; foreign divorces, care and custody**

**Section 29.** 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.

#### **Chapter 208: Section 30 Minor children; removal from commonwealth; prohibition**

**Section 30.** 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.

#### **Chapter 208: Section 31 Custody of children; shared custody plans**

**Section 31.** 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.

#### **Chapter 208: Section 32 Child; bringing before court; writ of habeas corpus**

**Section 32.** 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.

#### **Chapter 208: Section 33 Jurisdiction; procedure**

**Section 33.** The court may, if the course of proceeding is not specially prescribed, hear and determine all matters coming within the purview of this chapter according to the course of proceedings in ecclesiastical courts or in courts of equity, and may issue process of attachment and execution and all other proper and necessary processes. In such proceedings the court shall have jurisdiction in equity of all causes cognizable under the general principles of equity jurisprudence, arising between husband and wife, such jurisdiction to be exercised in accordance with the usual course of practice in equity proceedings.

#### **Chapter 208: Section 34 Alimony or assignment of estate; determination of amount; health insurance**

**Section 34.** Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance. In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each

of the parties and the opportunity of each for future acquisition of capital assets and income. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse 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 do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

#### **Chapter 208: Section 34A Alimony judgment ordering conveyance; effect**

**Section 34A.** Whenever a judgment for alimony shall be made in a proceeding for divorce directing that a deed, conveyance or release of any real estate or interest therein shall be made such judgment shall create an equitable right to its enforcement, subject to the provisions for recording of notice in section fifteen of chapter one hundred and eighty-four, in the party entitled thereto by the judgment, and if the judgment has not been complied with at the time the judgment of divorce becomes absolute, and is thereafter recorded in the manner provided by section forty-four of chapter one hundred and eighty-three, then the judgment itself shall operate to vest title to the real estate or interest therein in the party entitled thereto by the judgment as fully and completely as if such deed, conveyance or release had been duly executed by the party directed to make it.

No assignment, transfer or conveyance, from one spouse to the other, under this section or under a separation agreement, of real estate which is encumbered by a mortgage shall be deemed a transfer or divestment of said mortgage under the provisions of mortgage covenants, which provide that the debt secured by said mortgage becomes due and payable on demand upon transfer or divestment to anyone other than the mortgagor.

#### **Chapter 208: Section 34B Order to vacate marital home**

**Section 34B.** Any court having jurisdiction of actions for divorce, or for nullity of marriage or of separate support or maintenance, may, upon commencement of such action and during the pendency thereof, order the husband or wife to vacate forthwith the marital home for a period of time not exceeding ninety days, and upon further motion for such additional certain period of time, as the court deems necessary or appropriate if the court finds, after a hearing, that the health, safety or welfare of the moving party or any minor children residing with the parties would be endangered or substantially impaired by a failure to enter such an order. The opposing party shall be given at least three days' notice of such hearing and may appear and be heard either in person or by his attorney. If the moving party demonstrates a substantial likelihood of immediate danger to his or her health, safety or welfare or to that of such minor children from the opposing party, the court may enter a temporary order without notice, and shall immediately thereafter notify said opposing party and give him or her an opportunity to be heard as soon as possible but not later than five days after such order is entered on the question of continuing such temporary order. The court may issue an order to vacate although the opposing party does not reside in the marital home at the time of its issuance, or if the moving party has left such home and has not returned there because of fear for his or her safety or for that of any minor children.

#### **Chapter 208: Section 34C Orders to vacate marital home and orders of restraint; notice to law enforcement agencies; procedures; violations**

**Section 34C.** Whenever a division of the probate and family court department issues an order to vacate under the provisions of section thirty-four B, or an order prohibiting a person from imposing any restraint on the personal liberty of another person under section eighteen or under the provisions of section thirty-two of chapter two hundred and nine or section three, four or five of

chapter two hundred and nine A or section fifteen or twenty of chapter two hundred and nine C or an order for custody pursuant to any abuse prevention action, the register shall transmit two certified copies of each order forthwith to the appropriate law enforcement agency which shall serve one copy of each such order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order.

The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated by the court and shall direct the agency to destroy all records of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in the house of correction, or both such fine and imprisonment. Each such order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any such violation may be enforced in the superior or district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

#### **Chapter 208: Section 34D Request for restraining order or order to vacate marital home; information provided to petitioner upon filing; domestic violence record search; outstanding warrants**

**Section 34D.** Upon the filing of a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a petitioner shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a petitioner shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such petitioner shall be instructed by such district attorney's office relative to the procedures required to initiate such criminal proceedings including, but not limited to, the filing of a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a petitioner shall be provided with such information in the petitioner's native language.

When considering a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

#### **Chapter 208: Section 35 Alimony; enforcement**

**Section 35.** The court may enforce judgments, including foreign decrees, for allowance, alimony or allowance in the nature of alimony, in the same manner as it may enforce judgments in equity.

#### **Chapter 208: Section 36 Security for payment of alimony or support; enforcement of judgments or orders**

**Section 36.** When alimony or support is adjudged for the spouse or children, the court may require sufficient security for its payment according to the judgment. Each judgment or order of support which is issued, reviewed or modified pursuant to this chapter shall conform to and shall be enforced in accordance with the provisions of section twelve of chapter one hundred and nineteen A.

**Chapter 208: Section 36A Continuing jurisdiction to enforce alimony, support and maintenance or child support; order for trustee process**

**Section 36A.** (1) In any case in which an obligor is under court order to pay alimony or support and maintenance or child support in an action or judgment for divorce under this chapter or in an action or judgment for separate support under chapter two hundred and nine, the court which entered the support order shall retain continuing jurisdiction over the parties to the order and may enter an order of trustee process against the disposable earnings of the obligor, both those presently due and owing and those which will be due and owing at a future time, up to an amount permitted by federal law. Before the court may enter such an order, it shall find that all other domestic remedies available to collect support have been exhausted or would be ineffective.

For the purpose of this section, the words "disposable earnings" shall mean that part of the compensation paid or payable to the obligor for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension or retirement program, which remains after the deduction of any amounts required by law to be withheld; and the word "trustee" shall mean the person, firm, association, or corporation by whom the obligor is employed.

(2) A complaint seeking an order of trustee process may be sought by the spouse or parent, custodian or guardian of the child, a family service officer or probation officer, or in the case of persons receiving public assistance, the department of public welfare. The complaint will be filed in the court which issued the judgment of divorce or separate support or in which the action for divorce or separate support is pending under the docket number of the action for divorce or separate support and shall state that the obligor is under a court order to provide support, the amount of the order, the amount of the arrearage, if any; that all other domestic remedies available to collect support have been exhausted or would be ineffective; the name and address of the employer of the obligor; the obligor's monthly disposable earnings from said employer, which may be based upon information and belief, and the amount sought to be trusteeed. The complaint shall be served on both the obligor and his employer in accordance with applicable law and rules for service of process; provided, however, that where the court had personal jurisdiction over the obligor in the original action for divorce or separate support, personal service on such obligor shall not be required as long as the obligor receives adequate and reasonable notice of the proceeding.

(3) After a hearing on the merits, the court may enter an order of trustee process against the obligor's disposable earnings. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be trusteeed for each pay period. The order shall be subject to review by the court for modification and dissolution upon the filing of a motion, with a sworn affidavit supporting same.

(4) Upon receipt of an order for trustee process, the trustee shall transmit each pay period without delay to the clerk of the court, or to the family service office of the court or any other party designated by the court, the amount ordered by the court to be trusteeed for each such period. These funds shall be disbursed to the party designated by the court. If the person entitled to receive said support is a recipient of public assistance, such funds shall be disbursed directly to the department of public welfare up to the amount of aid being paid to the recipient by the department.

(5) No employer may discharge, suspend, or discipline an employee by reason of his having been trusteeed pursuant to this section. Any employer who violates this clause shall be liable to the employee for compensation and employment benefits lost, if any, during the time of the unlawful discharge, suspension, or discipline.

(6) The commonwealth and any of its political sub-divisions shall be subject to trustee process under this section as if they were private parties.

(7) Any remedy provided pursuant to this section shall be in addition to, and not in lieu of, any other remedy available for the enforcement of support obligations.

**Chapter 208: Section 37 Alimony; revision of judgment**

**Section 37.** After a judgment for alimony or an annual allowance for the spouse or children, the court may, from time to time, upon the action for modification of either party, revise and alter its judgment relative to the amount of such alimony or annual allowance and the payment thereof, and may make any judgment relative thereto which it might have made in the original action.

The court, provided there is personal jurisdiction over both parties, may modify and alter a foreign judgment, decree, or order of divorce or separate support where the foreign court did not have personal jurisdiction over both parties upon the entry of such judgment, decree or order.

The court, provided there is personal jurisdiction over both parties to a foreign judgment, decree, or order of divorce for support, where such foreign court had personal jurisdiction over both parties, may modify and alter such foreign judgment, decree, or order only to the extent it is modifiable or alterable under the laws of such foreign jurisdiction; provided, however, that if both parties are domiciliaries of the commonwealth, then the court may modify and alter the foreign judgment in the same manner as it could have had the judgment, order, or decree been issued by the court; and provided further, that the court may not modify or alter the judgment, order or decree of a foreign jurisdiction which had personal jurisdiction over both parties concerning the division or assignment of marital assets or property.

## **GENERAL PROVISIONS**

### **Chapter 208: Section 38 Costs**

**Section 38.** In any proceeding under this chapter, whether original or subsidiary, the court may, in its discretion, award costs and expenses, or either, to either party, whether or not the marital relation has terminated. In any case wherein costs and expenses, or either, may be awarded hereunder to a party, they may be awarded to his or her counsel, or may be apportioned between them.

### **Chapter 208: Section 39 Foreign divorces; validity**

**Section 39.** A divorce adjudged in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth.

## **CRIMINAL PROVISIONS.**

### **Chapter 208: Section 40 Cohabitation after divorce**

**Section 40.** Persons divorced from each other cohabiting as husband and wife or living together in the same house shall be held to be guilty of adultery.

### **Chapter 208: Section 41 Personation**

**Section 41.** Whoever falsely personates another or wilfully and fraudulently procures a person so to do, or fraudulently procures false testimony to be given, or makes a false or fraudulent return of service of process in an action for divorce or in any proceeding connected therewith, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

### **Chapter 208: Section 42 Procurement of unlawful divorce**

**Section 42.** Whoever knowingly procures or obtains or assists another to procure or obtain any false, counterfeit or fraudulent divorce or judgment of divorce, or any divorce or judgment of divorce from a court of another state for or in favor of a person who at the time of making application therefor was a resident of this commonwealth, such court not having jurisdiction to grant such judgment, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

### **Chapter 208: Section 43 Advertisement to procure divorce**

**Section 43.** Whoever writes, prints or publishes, or solicits another to write, print or publish, any notice, circular or advertisement soliciting employment in the business of procuring divorces or

offering inducements for the purpose of procuring such employment shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

#### **Chapter 208: Section 44 Certificate of divorce; unlawful issuance**

**Section 44.** Whoever, except in compliance with an order of a court of competent jurisdiction, gives, signs or issues any writing purporting to grant a divorce to persons who are husband and wife according to the laws of the commonwealth, or purporting to be a certificate that a divorce has been granted to such persons, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than three years, or both.

Chapter 208: Section 45 Criminal offenses; notice to district attorney

**Section 45.** If a divorce is granted for a cause constituting a crime, committed within the commonwealth and within the time provided by law for making complaints and finding indictments therefor, the court granting the divorce may, in its discretion, cause notice of such facts to be given by the clerk of the court or register of probate to the district attorney for the district where such crime was committed, with a list of the witnesses proving such crime and any other information which it considers proper and thereupon the district attorney may cause complaint therefor to be made before a magistrate having jurisdiction thereof, or may present the evidence thereof to the grand jury.

#### **STATISTICS OF DIVORCE.**

##### **STATISTICS OF DIVORCE**

#### **Chapter 208: Section 46 Statistical reports; additional information**

**Section 46.** The registers of probate shall receive the statistical reports filed pursuant to section six B; and shall, upon a divorce becoming absolute, add to the information contained therein the date and number of the judgment, the cause for which the divorce was granted, and such additional information as the commissioner of public health deems useful for statistical and research purposes and shall further, on the tenth day of the month following every month in which divorces become absolute, transmit such reports to the commissioner of public health. Any such information forwarded to the commissioner of public health shall not constitute a public record nor be available except as may be necessary for the purposes stated in section two of chapter one hundred and eleven.

#### **CHAPTER 209. HUSBAND AND WIFE.**

##### **GENERAL PROVISIONS.**

#### **Chapter 209: Section 1 Married persons; separate property and property held as tenants by entirety; liability for debts**

**Section 1.** The real and personal property of any person shall, upon marriage, remain the separate property of such person, and a married person may receive, receipt for, hold, manage and dispose of property, real and personal, in the same manner as if such person were sole. A husband and wife shall be equally entitled to the rents, products, income or profits and to the control, management and possession of property held by them as tenants by the entirety.

The interest of a debtor spouse in property held as tenants by the entirety shall not be subject to seizure or execution by a creditor of such debtor spouse so long as such property is the principal residence of the nondebtor spouse; provided, however, both spouses shall be liable jointly or severally for debts incurred on account of necessities furnished to either spouse or to a member of their family.

#### **Chapter 209: Section 1A Tenants by entirety under older deed; electing treatment of tenancy**

**Section 1A.** Tenants by the entirety holding under a deed dated prior to February eleventh, nineteen hundred and eighty may elect to have their tenancy treated as being subject to the provisions of chapter seven hundred and twenty-seven of the acts of nineteen hundred and

seventy-nine; provided, however, that such election is made in writing, identifying the real estate with reference to the book and page of the registry of deeds wherein such deed is filed. Such election shall be executed by the grantees named as tenants by the entirety on the deed who are electing to be subject to this section, duly notarized, and recorded in said registry.

**Chapter 209: Section 2 Married woman; power to contract**

**Section 2.** A married woman may make contracts, oral and written, sealed and unsealed, in the same manner as if she were sole, and may make such contracts with her husband.

**Chapter 209: Section 3 Transfers between husband and wife**

**Section 3.** Transfers of real and personal property between husband and wife shall be valid to the same extent as if they were sole.

**Chapter 209: Section 4 Married woman; work and labor; presumption**

**Section 4.** Work and labor performed by a married woman for a person other than her husband and children shall, unless there is an express agreement on her part to the contrary, be presumed to be performed on her separate account.

**Chapter 209: Section 5 Married woman; acting as fiduciary**

**Section 5.** A married woman may be an executrix, administratrix, guardian, conservator, trustee or receiver, and may bind herself and the estate which she represents without any act or assent of her husband.

**Chapter 209: Section 6 Married woman; power to sue and be sued**

**Section 6.** A married woman may sue and be sued in the same manner as if she were sole; but this section shall not authorize suits between husband and wife except in connection with contracts entered into pursuant to the authority contained in section two.

**Chapter 209: Section 7 Married woman; liabilities**

**Section 7.** A married woman shall not be liable for her husband's debts, nor shall her property be liable to be taken on an execution against him. But a married woman shall be liable jointly with her husband for debts due, to the amount of one hundred dollars in each case, for necessities furnished with her knowledge or consent to herself or her family, if she has property to the amount of two thousand dollars or more.

**Chapter 209: Section 8 Husband; liability for wife's debts**

**Section 8.** A husband shall not be liable upon a cause of action which originated against his wife prior to their marriage, or to pay a judgment recovered against her.

**Chapter 209: Section 9 Husband; liability on contracts concerning separate property of wife**

**Section 9.** Contracts made by a married woman relative to her separate property, trade, business, labor or services shall not bind her husband or render him or his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole.

**Chapter 209: Section 13 Marriage settlements**

**Section 13.** The preceding sections shall not invalidate a marriage settlement or contract.

**MARRIAGE CONTRACTS.**

**Chapter 209: Section 25 Antenuptial settlements; force and effect**

**Section 25.** At any time before marriage, the parties may make a written contract providing that, after the marriage is solemnized, the whole or any designated part of the real or personal property or any right of action, of which either party may be seized or possessed at the time of the marriage, shall remain or become the property of the husband or wife, according to the terms of the contract. Such contract may limit to the husband or wife an estate in fee or for life in the whole or any part of the property, and may designate any other lawful limitations. All such limitations shall take effect at the time of the marriage in like manner as if they had been contained in a deed conveying the property limited.

**Chapter 209: Section 26 Antenuptial settlements; record; description of property**

**Section 26.** A schedule of the property intended to be affected, containing a sufficiently clear description thereof to enable a creditor of the husband or wife to distinguish it from other property, shall be annexed to such contract; and such contract and schedule shall, either before the marriage or within ninety days thereafter, be recorded in the registry of deeds for the county or district where the husband resides at the time of the record, or, if he is not a resident of this commonwealth, then in the registry of deeds for the county or district where the wife resides at the time of the record, if it is made before the marriage, or where she last resided, if made after the marriage. If the contract is not so recorded, it shall be void except as between the parties thereto and their heirs and personal representatives. It shall also be recorded in the registry of deeds for every county or district where there is land to which it relates.