**SENATE . . . . . . . . . . . . . . No. \_**

 **REDRAFT OF S. 1080 AND S. 1083**

The Commonwealth of Massachusetts

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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An Act to strengthen families and enhance the welfare and happiness of children.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The first sentence of section 24 of chapter 119 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the word “attention”, in line 9, the following words:- provided, however, that the court shall not consider a parent’s disability, as defined in section 31 of chapter 208, or its manifestations to be considered a negative factor in a determination of whether a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, absent a specific showing by clear and convincing evidence made by the department, that there is a nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and alleged harm to the child, and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208.

SECTION 2. Said section 24 of said chapter 119, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:- If the court considers a parent’s disability, as defined in section 31 of chapter 208, or its manifestations as a negative factor in determining that a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, then the court shall make specific written findings as to the nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and harm to the child, the impact this has on current parental fitness, and whether adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208, can alleviate said harm or render the parent fit.

SECTION 3. The second sentence of subsection (b) of section 26 of said chapter 119, as so appearing, is hereby further amended by inserting after the word “concern”, in line 10, the following words:- provided, however, that the court shall not consider a parent’s disability, as defined in section 31 of chapter 208, or its manifestations to be considered a negative factor in a determination of whether a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, absent a specific showing by clear and convincing evidence made by the department, that there is a nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and alleged harm to the child, and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208.

SECTION 4. Said subsection (b) of said section 26 of said chapter 119, as so appearing, is hereby further amended by inserting after the second sentence the following sentence:- If the court considers a parent’s disability, as defined in section 31 of chapter 208, or its manifestations as a negative factor in determining that a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, then the court shall make specific written findings as to the nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and harm to the child, the impact this has on current parental fitness, and whether adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208, can alleviate said harm or render the parent fit.

SECTION 5. Said section 26 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 24, the words “legal custody” and inserting in place thereof the following words:- decision-making responsibility, as defined in section 31 of chapter 208,

SECTION 6. The third sentence of section 29C of said chapter 119, as so appearing, is hereby amended by inserting after the word “concern”, in line 19, the following words:- provided, however, that the court shall not consider a parent’s disability, as defined in section 31 of chapter 208, or its manifestations to be considered a negative factor in a determination of whether a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, absent a specific showing by clear and convincing evidence made by the department, that there is a nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and alleged harm to the child, and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208.

SECTION 7. Said section 26 of said chapter 119, as so appearing, is hereby further amended by inserting after the third sentence the following sentence:- If the court considers a parent’s disability, as defined in section 31 of chapter 208, or its manifestations as a negative factor in determining that a child is in need of care and protection or for the removal of custody of a child from a parent, guardian, or other custodian, then the court shall make specific written findings as to the nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and harm to the child, the impact this has on current parental fitness, and whether adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208, can alleviate said harm or render the parent fit.

SECTION 8. The first sentence of subsection (a) of section 5-204 of chapter 190B of the General Laws, as so appearing, is hereby amended by inserting after the word “custody”, in line 8, the following words:- provided, however, that the court shall not consider a parent’s disability, as defined in section 31 of chapter 208, or its manifestations to be considered a negative factor in a determination of whether to appoint a temporary or permanent guardian for a child , absent a specific showing by clear and convincing evidence made by the party raising the allegation, that there is a nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and alleged harm to the child, and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208.

SECTION 9. Said subsection (a) of said section 5-204 of said chapter 190B, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:- If the court considers a parent’s disability, as defined in section 31 of chapter 208, or its manifestations as a negative factor in determining whether to appoint a temporary or permanent guardian for a child, then the court shall make specific written findings as to the nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and harm to the child, the impact this has on current parental fitness, and whether adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208, can alleviate said harm or render the parent fit.

SECTION 10. Section 28A of chapter 208 of the General Laws is hereby repealed.

SECTION 11. Said chapter 208 is hereby further amended by striking out section 31, as appearing in the 2020 Official Edition, and inserting in place thereof the following section:-

Section 31. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Adaptive parenting equipment”, any piece of equipment or any item used to increase, maintain or improve the parenting capabilities of a parent with a disability.

“Decision-making responsibility”, the responsibility to make major decisions regarding the child’s happiness and welfare, including matters of education, extracurricular activities, medical care, emotional and behavioral development.
“Disability”, as described in 42 U.S.C. 12102.

“Parental responsibility”, decision-making and residential responsibility.

“Parenting plan”, a written plan describing parental responsibility relative to each child.

“Parenting time”, the time when a child is under the care and supervision of one parent or a parenting time supervisor, without regard to whether that parent has shared or primary residential responsibility.

“Primary residential responsibility”, a child resides with and is under the care and supervision of one parent and has parenting time with the other parent, unless the court determines that such time with the other parent is not in the best interest of the child.
“Shared decision-making responsibility,” mutual responsibility and involvement in major decisions regarding the child’s happiness and welfare, including matters of education, extracurricular activities, medical care and emotional and behavioral development.

“Shared residential responsibility,” a child has periods of residing with and being under the supervision of a parent in such a way as to assure a child frequent and continued contact with both parents; provided, however, that a residence may be designated as the child’s primary residence while the parents have shared residential responsibility.

“Sole decision-making responsibility”, one parent has the right and responsibility to make major decisions regarding the child’s happiness and welfare, including matters of education, extracurricular activities, medical care and emotional and behavioral development.

“Supportive parenting services”, services that help a parent with a disability compensate for those aspects of the disability that affect their ability to care for their children and that will enable them to discharge their parental responsibilities, including, but not limited to, specialized or adapted training, evaluations, assistance with effective use of adaptive equipment and accommodations that allow a parent with a disability to benefit from other services, such as braille text or sign language interpreters.

(b) In making a temporary order or judgment on the merits concerning a child’s care, the court may order: (1) shared residential responsibility and shared-decision making responsibility; (2) shared residential responsibility and sole decision-making responsibility; (3) sole residential responsibility and shared decision-making responsibility; or (4) sole residential responsibility and sole decision-making responsibility. In making a temporary order the court shall consider holidays and issues related to the child’s schedule that are likely to arise before the next date at which orders will be made.

 (c) An order entered relative to care and custody, under 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 5 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.

 (d) In making a temporary order or judgment on the merits concerning a child’s care or custody, the court shall apply the following presumptions: (1) until the court renders a judgment on the merits, absent emergency conditions, abuse or neglect, the parents shall have temporary shared decision-making responsibility of a minor child of the marriage; (2) there shall be no presumption in favor or against shared residential responsibility in any proceeding, except as provided in section 31A; (3) there shall be no presumption either in favor or against shared decision-making responsibility in a judgment on the merits, except as provided in section 31A; (3) prior orders or agreements shall not create a presumption that their terms shall be continued.

(e) In making an order or judgment on the merits concerning the care or custody of a child, the court shall render a decision in the best interest of the child by seeking to maximize the happiness and welfare of the child. The court shall apply the following factors:
(1) the past, present and potential future relationship between the parent and the child;
(2) the child’s adjustment to their school, community, and home, including any siblings and other household members;
(3) the willingness and ability of a parent to allow a close and continuing relationship between the child and the other parent; provided, however, that: (i) the court shall not consider this factor if the court has found under section 31A that there was a pattern or serious incident of abuse; (ii) the court may decline to consider this factor if a parent has proven by a preponderance of the evidence that the other parent has: (A) committed an act of abuse as defined in section 1 of chapter 209A against a person; (B) a sexual offense against a person or animal; or (C) committed an act of cruelty against an animal;
(4) the capability and desire of the parent to understand and meet the physical, emotional, mental and social needs of the child, taking into account any special needs or disability of the child;
(5) the practicality of the arrangement, over time, for the parents and the child, and for all other parties relevant to carrying out the arrangement, including, but not limited to, the geographic location of a parent;
(6) the ability of the parents to cooperate with each other; and;
(7) the preferences of the child, if the child is of sufficient age, temperament and maturity; provided, however, that the court shall not disregard the preferences of a child based on the child’s disability, unless the court finds by clear and convincing evidence that the child’s disability prevents them from stating a adequately considered preference;
(f) The court may apply additional factors so long as the additional factors are relevant to the best interest of the child by seeking to maximize the happiness and welfare of the child; provided, however, that: (1) the court shall make written findings specifying the additional factors considered and their relative weight; (2) if the court considers a parent’s disability or its manifestations under any of the factors under the previous subsection or as an additional factor under this subsection, the court shall make specific written findings as to the nexus between the parent’s disability, or its manifestations, and harm to the child, what effect, if any, said harm has on the best interests of the child, and whether adaptive parenting equipment or supportive parenting services can alleviate said harm; provided further, nothing in this section shall allow a parent’s disability or its manifestations to be considered a negative factor in a determination of custody of or parenting time with a minor child, absent a specific showing by a preponderance of the evidence made by the party raising the allegation, that there is a nexus between the parent’s disability, or its manifestations, and alleged harm to the child and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment or supportive parenting.

(g) In making an order or judgment on the merits concerning the care or custody of a child, the court shall make written findings on the court’s consideration of each of the factors listed in the subsection (e) and any additional factors applied under the previous subsection; provided, however, that 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 without making written findings. If the court modifies or rejects the parents’ agreement, the court shall issue written findings applying all of the factors listed in the previous subsection and any additional factors applied under the previous subsection.

(h) Before trial, when a party requests distribution of parental responsibility and division of parenting time, that party shall provide a proposed order to the court. At trial, if the issues of parental responsibility or parenting time are contested and either party seeks shared decision-making or shared residential responsibility, the parties, jointly or individually, shall submit to the court a parenting plan setting forth the details of their proposed plan 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 shall have the child reside or spend time with each party, including holidays and vacations, or the procedure by which such periods of time shall be determined. At trial on the merits, the court shall consider the parties’ proposed parenting plans. The court may accept, change, or reject the parenting plan submitted.

(i) The entry of an order or judgment relative to the parental responsibility for the minor children shall not negate or impede the ability of both parents to have access to the academic, medical, hospital, or other health records of the child, as the parent would have had if the order or judgment had not been entered; provided, however, that if a court has issued an order to vacate against one parent or an order prohibiting a parent from imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the records, in whole or in part, is necessary to ensure the health, safety, or welfare of such child or party, the court may order that all or any part of such record the shall not be disclosed to a parent or make other such orders to restrict release of such records in accordance with section 34H of chapter 71.

(j) An award of shared decision-making responsibility or shared residential responsibility 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. A parent’s responsibility for child support shall be governed by the child support guidelines promulgated by the chief justice under section 28 regardless of the use of the terms shared or primary residential responsibility in an order or judgment.

 (k) The court shall make orders and judgments on the merits applying the standards under this section when making determinations regarding custody or parenting time or visitation under section 37 of chapter 209 and section 10 of chapter 209C.

SECTION 12. Section 31A of said chapter 208, as so appearing, is hereby further amended by striking out, in lines 20 and 21, the words “sole custody, shared legal custody or shared physical custody” and inserting in place thereof the following words:- sole decision-making responsibility, as defined in section 31, shared decision-making responsibility, as defined in section 31, or shared residential responsibility, as defined in section 31,

SECTION 13. The second paragraph of subsection (e) of section 10 of chapter 209C of the General Law, as so appearing, is hereby amended by striking out, in lines 60 and 61, the words “sole custody, shared legal custody or shared physical custody” and inserting in place thereof the following words:- sole decision-making responsibility, as defined in section 31 of chapter 208, shared decision-making responsibility, as defined in section 31 of chapter 208, or shared residential responsibility, as defined in section 31 of chapter 208,

SECTION 14. The second sentence of subsection (c) of section 3 of chapter 210 of the General Laws, as so appearing, is hereby amended by inserting after the word “concern”, in line 19, the following words:- provided, however, that the court shall not consider a parent’s disability, as defined in section 31 of chapter 208, or its manifestations to be considered a negative factor in a determination whether to terminate parental rights, absent a specific showing by clear and convincing evidence made by the department, that there is a nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and alleged harm to the child, and that this alleged harm cannot be prevented or alleviated by accommodations for the disability, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208.

SECTION 15. Said subsection (c) of said section 3 of said chapter 210, as so appearing, is hereby further amended by inserting after the second sentence the following sentence:- If the court considers a parent’s disability, as defined in section 31 of chapter 208, or its manifestations as a negative factor in determining whether to terminate parental rights, then the court shall make specific written findings as to the nexus between the parent’s disability, as defined in section 31 of chapter 208, or its manifestations, and harm to the child, the impact this has on current parental fitness, and whether adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208, can alleviate said harm or render the parent fit; provided further, the court shall dismiss the department’s petition under this section if the court finds that the department acted in violation of this subsection of section 3, or 42 U.S.C. 12132 or 29 U.S.C. 794.

SECTION 16. Said subsection (c) of said section 3 of said chapter 210, as so appearing, is hereby further amended by striking out the twelfth paragraph and inserting in place thereof the following paragraph:-

 (xii). A failure of a parent to discharge parental responsibilities that is reasonably likely to continue for a prolonged, indeterminate period, and that results in harm to the child, and cannot be alleviated by adequate accommodations, including adaptive parenting equipment, as defined in section 31 of chapter 208, or supportive parenting services, as defined in section 31 of chapter 208