

# When Do Massachusetts Courts Order Sole Legal Custody for One Parent?

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**Attorney Nicole K. Levy explains why joint legal custody is not appropriate in every Massachusetts case involving minor children.**

As Attorney Levy discussed in her [four-part 2016 series on legal custody in Massachusetts](#), finding a precise definition of what rights legal custody embodies is surprisingly tricky. There is a great deal of misunderstanding surrounding the scope, purpose, and rules of legal custody. Indeed, the distinctions between sole and shared legal custody are often marked by confusion.

Under the [Massachusetts divorce statute](#), “shared legal custody” is defined as the “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.” Meanwhile, the statute defines “sole legal custody” as when “one parent shall have the right and responsibility to make” the same “major decisions” regarding the child.

### **How does Legal Custody Work in Practice in Massachusetts?**

The practical impacts of legal custody often focus on parents’ [access to medical and educational records](#) and the rights of each parent to [consent to medical and educational services](#) for their children. Meanwhile, sole legal custody is often understood as one parent having sole decision-making authority over medical and educational decisions. Among the problems that parents experience with joint legal custody is one parent seeking to exercise [“veto power” over medical or educational decisions](#) when the parents disagree about a particular service or provider.

The practical implications of legal custody often center on parents' access to medical and educational records and their rights to consent to medical and educational services for their children. Sole legal custody is often understood to grant one parent exclusive decision-making authority over these matters. A common issue in joint legal custody cases arises when one parent attempts to exercise "veto power" over medical or educational decisions, particularly in cases of disagreement about a specific service or provider.

### **When do Courts Order Shared or Sole Legal Custody in Massachusetts?**

In Massachusetts, legal custody is treated differently for married and unmarried parents. At the temporary order stage of a Massachusetts divorce, there is a [presumption in favor of shared legal custody](#) for married parents, with a requirement that a probate court judge enter findings if shared legal custody is not in the children’s best interests.

There is no presumption in favor of shared legal custody at the trial stage of divorce. Still, few would question that the presumption in favor of temporary shared legal custody has a significant impact on final divorce judgments, with a substantial majority of such judgments including shared legal custody for divorced parents.

The law is quite different for unmarried parents. The [unmarried parent statute](#) specifically disfavors shared legal custody where it provides:

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

Because the statute requires the judge to enter specific written findings "that the parents have successfully exercised joint responsibility for the child" in the past, shared legal custody is less certain in custody cases involving unmarried parents. That said, if the parents cohabitated before the custody proceedings or there is a clear record of both parties enjoying substantial overnight parenting time, it remains common for Massachusetts courts to order shared legal custody for unmarried parents.

## **When Do Courts Order Sole Legal Custody in Massachusetts Child Custody Cases?**

Beyond the statutory differences between married and divorced parents, there are numerous reasons why Massachusetts courts may grant sole legal custody to one parent. Several factors impacting legal custody turn on the parents' ability (or inability) to work together and cooperate on behalf of their children.

A recent unpublished opinion of the Massachusetts Appeals Court, [Pawle v. Donovan \(2024\)](#), illustrates some of the reasons why Massachusetts Probate & Family Court judges will decline to enter an order for shared legal custody in a particular case. In this case, the parties were married and granted joint legal custody of their child at the time of divorce. The mother filed a modification, and the judge issued a modification judgment that granted the mother sole legal custody.

In its opinion, the Appeals Court identified a variety of problematic behaviors from the father that the Court identifies as grounds for modifying the shared legal custody order:

- Hostile communication style about parenting issues
- Unilateral decision making
- Inability to accept any criticism regarding parenting decisions without then using abusive, belittling language towards the other parent
- Antagonistic communication style with the other parent in text messages
- Disagreements about routine medical or dental care for children
- Causing medical and treatment providers to cancel appointments and stop treatment of children
- Unilaterally unenrolling the child from preschool

The Court also considered the conclusions of a court-ordered clinical psychologist, whose findings about the father included:

- Suffered from paranoid ideation and delusional thinking
- Demonstrated “significant scores” of self-importance and dominance which are traits associated with narcissistic personality disorder.
- Identified traits that interfered with the father's ability to work collaboratively with the mother to make joint decisions about the child's medical care or education

Based on these findings, the Appeals Court concluded that the “father's acrimonious communication style and mental health challenges prevent the parties from making joint decisions about their child's welfare”, and that the lower court “did not abuse discretion by granting the mother sole legal custody of the child.”

### **A Parent’s Medical Decisions Can Trigger a Change in Legal Custody**

Another recent unpublished opinion of the Appeals Court, [Chesler v. Ivanova \(2024\)](#), reveals a somewhat different reason why Massachusetts Probate & Family Court judges will sometimes modify an order for shared legal custody. In Chesler, the parties had never married, and the

mother was granted sole legal custody of the child in 2011. Following a trial in 2021, the probate court judge entered a judgment of modification, granting sole legal custody of the child to the father.

As in the [Pawle](#) decision, the Court in [Chesler](#) identified a problematic history of communications between the parties in affirming a probate court judge's decision to modify sole legal custody of a child. However, the Chesler opinion focused more on the mother's medical decision-making. The Court found:

Under the original paternity judgment, the mother had been solely responsible for medical and dental care; the father told the mother it was a mistake not to take the child to the dentist, but the mother thought dental appointments were unnecessary. This resulted in the child's dental health being "nothing short of disastrous," including "roughly a dozen cavities," and required the father to arrange for the child to have a root canal, extractions, and other restorative procedures. The father "was also the moving force concerning getting the child needed therapeutic services and an educational evaluation."

....

The father had to arrange dental care to remedy conditions resulting from the mother's position that, despite the father's urgings, dental visits were unnecessary. After the mother's actions in September and October 2021, the child stated that she wanted to die or run away, but the mother made no attempt to arrange mental health care for the child; the father did so.

Although [Chesler](#) opinion noted the parties' inability to communicate as a factor in its decision, the child's lack of access to necessary dental and mental health care seemed to be driving factors in the decision to grant the father sole legal custody. The Appeals Court noted that the decision still allowed the mother a degree of input in legal custody decisions where "the modification judgment provides that the father must inform the mother in advance of any major religious, educational, or medical decisions involving the child, and certain other matters such as a change in school, in time for the mother to provide input."

### **When Should Parties Consider Seeking to Modify Shared Legal Custody?**

To support [modifying child custody](#) or parenting time under [G.L. c. 208 § 28](#), the moving party must first establish that a material and substantial change in circumstance has occurred to warrant a change and that the change is in the child's best interests.

Some common occurrences that may warrant a modification in legal custody include:

- One party showing extreme hostility in communications (profanity, personal attacks, abusive language, etc.)
- Unilateral decision-making by one party, such as canceling medical or educational providers or care
- Disagreements over routine matters that can be attributable to one party

- Negative impacts on a child's medical, dental, or psychological health as a result of one parent's actions or inactions
- Mental health traits of a parent that make shared legal custody untenable

Because a modification that demands sole legal custody of a child would remove the other parent's right to make important decisions concerning the child's health, safety, and welfare, judges in Massachusetts are often hesitant to approve such modifications absent strong evidence of the other parent's inability to act in the children's best interests.

Typically, this requires a showing that the other party has deeply troubling issues, such as substance abuse or mental health problems, that adversely impact their parental fitness.

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