

MGL c.208, s.28

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 of the trial court, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice of the trial court or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be

entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree.

When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

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