

SENATE PROPOSAL OF AMENDMENT

H. 88

An act relating to parental rights and responsibilities involving a child conceived as a result of a sexual assault

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 15 V.S.A. § 665 is amended to read:

§ 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF THE CHILD

(a) In an action under this chapter, the ~~court~~ Court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The ~~court~~ Court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the ~~court~~ Court shall award parental rights and responsibilities primarily or solely to one parent.

(b) In making an order under this section, the ~~court~~ Court shall be guided by the best interests of the child, and shall consider at least the following factors:

(1) the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance;

(2) the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment;

(3) the ability and disposition of each parent to meet the child's present and future developmental needs;

(4) the quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change;

(5) the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;

(6) the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

(7) the relationship of the child with any other person who may significantly affect the child;

(8) the ability and disposition of the parents to communicate, cooperate with each other, and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and

(9) evidence of abuse, as defined in section 1101 of this title, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

* * *

(f) The State has a compelling interest in not forcing a victim of sexual assault or sexual exploitation to continue an ongoing relationship with the perpetrator of the abuse. Such continued interaction can have traumatic psychological effects on the victim, making recovery more difficult, and negatively affect the victim's ability to parent and to provide for the best interests of the child. Additionally, the State recognizes that a perpetrator may use the threat of pursuing parental rights and responsibilities to coerce a victim into not reporting or assisting in the prosecution of the perpetrator for the sexual assault or sexual exploitation, or to harass, intimidate, or manipulate the victim.

(1) The Court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the Court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault. As used in this subdivision, sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, and aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions.

(A) An order issued in accordance with this subdivision (f)(1) shall be permanent and shall not be subject to modification.

(B) Upon issuance of a rights and responsibilities order pursuant to this subdivision (f)(1), the Court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent.

(2) The Court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the Court finds that such an order is in the best interest of the child and finds by clear and convincing evidence that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent. A conviction is not required under this subdivision and the Court may consider other evidence of sexual assault or sexual exploitation in making its determination.

(A) For purposes of this subdivision (f)(2):

(i) sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252, aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions; and

(ii) sexual exploitation shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

(B) Except as provided in subdivision (f)(2)(C), the Court shall not issue a parent-child contact order in a case in which a parental rights and responsibilities order has been issued pursuant to this subdivision (f)(2) and any existing parent-child contact order concerning the child and the nonmoving parent shall be terminated.

(C) A party may file a motion for modification of the order only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.

(3) Issuance of an order in pursuant to this subsection shall not affect the right of the custodial parent to seek child support from the noncustodial parent.

Sec. 2. 15 V.S.A. § 668 is amended to read:

§ 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the ~~court~~ Court may annul, vary, or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

* * *

(c) A final order related to parental rights and responsibilities and parent child contact issued pursuant to subdivision 665(f)(1) of this title shall not be subject to modification. A party may file a motion for modification of an order related to parental rights and responsibilities and parent child contact issued pursuant to subdivision 665(f)(2) of this title only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.

Sec. 3. 13 V.S.A. § 2651(3) is amended to read:

(3) “Commercial sex act” means any ~~sex~~ sexual act, sexual conduct, or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.