

1 H.412

2 Introduced by Representatives McCullough of Williston, Dakin of Chester,
3 Frank of Underhill, Macaig of Williston, Masland of Thetford,
4 McCormack of Burlington, Mrowicki of Putney, Poirier of
5 Barre City, Sharpe of Bristol, Till of Jericho, Waite-Simpson of
6 Essex, and Yantachka of Charlotte

7 Referred to Committee on

8 Date:

9 Subject: Domestic relations; annulment and divorce; rights and responsibilities
10 order; best interests of the child

11 Statement of purpose of bill as introduced: This bill proposes to require the
12 Court to order shared parental rights and responsibilities and equal parent-child
13 contact provided it is in the best interest of the child.

14 An act relating to shared parental rights and responsibilities and equal
15 parent-child contact

16 It is hereby enacted by the General Assembly of the State of Vermont:

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

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

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

12 (1) To the extent that it is reasonable and in the best interests of the
13 child, the Court shall order shared parental rights and responsibilities and equal
14 parent-child contact, unless physical harm or significant emotional harm to the
15 child, other children, or either parent is likely to result.

16 (A) The Court shall consider granting shared parental rights and
17 responsibilities and equal parent-child contact upon a request by either parent.
18 Both parents shall be allowed an opportunity to submit a parenting plan when
19 there is a request for the Court to consider shared parental rights and equal
20 parent-child contact.

1 (B) When the Court does not award shared parental rights and
2 responsibilities and equal parent-child contact, the Court shall cite by clear and
3 convincing evidence the factors in subsection (b) of this section that make
4 shared parental rights and responsibilities and equal parent-child contact
5 unreasonable and not in the best interests of the child.

6 (2) If the Court finds a history of abuse, there shall be a rebuttable
7 presumption against awarding shared parental rights and responsibilities and
8 equal parent-child contact.

9 (3) The Court shall consider a parent's unreasonable denial of
10 continuing contact with the other parent as a significant factor in determining
11 parental rights and responsibilities. Denial of continuing contact based on a
12 just cause, such as a history of abuse, shall be deemed reasonable.

13 (4) If the Court finds a history of abuse and a parent has relocated to
14 avoid further abuse, the Court shall not consider the relocation as a factor
15 against awarding parental rights and responsibilities and parent-child contact to
16 the relocated parent.

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

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

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

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

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

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

15 (6) ~~the quality of the child's relationship with the primary care provider,~~
16 ~~if appropriate given the child's age and development~~ whether the
17 psychological and emotional needs and development of the child will suffer
18 due to lack of equal opportunity for active contact with and attention from both
19 parents;

20 (7) ~~the relationship of the child with any other person who may~~
21 ~~significantly affect the child~~ the interaction and relationship of the child with

1 his or her grandparents, siblings, persons cohabitating with a parent of the
2 child, any other residents of the household, or persons who may significantly
3 affect the child's best interests;

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

7 (9) ~~evidence of abuse, as defined in section 1101 of this title, and the~~
8 ~~impact of the abuse on the child and on the relationship between the child and~~
9 ~~the abusing parent.~~ evidence of abuse, including the issuance of a protective
10 order against the parent or the issuance of a court order or consent agreement,
11 the issuance of an emergency order, or a conviction for domestic assault;

12 (10) whether both parents have actively cared for the child before and
13 since separation;

14 (11) the child's wishes, taking into consideration the child's age and
15 maturity and child's ability to communicate his or her wishes;

16 (12) whether one or both of the parents agree to shared parental rights
17 and responsibilities;

18 (13) the geographic proximity of the parents; and

19 (14) whether the safety of the child, other children, or the other parent
20 will be jeopardized by awarding shared parental rights and responsibilities or
21 by unsupervised visitation.

1 (c) The ~~court~~ Court shall not apply a preference for one parent over the
2 other because of the sex of the child, the sex of a parent, or the financial
3 resources of a parent.

4 (d) The ~~court~~ Court may order a parent who is awarded responsibility for a
5 certain matter involving a child's welfare to inform the other parent when a
6 major change in that matter occurs.

7 (e) The jurisdiction granted by this section shall be limited by the Uniform
8 Child Custody Jurisdiction and Enforcement Act, if another state has
9 jurisdiction as provided in that act. For the purposes of interpreting that act
10 and any other provision of law which refers to a custodial parent, including but
11 not limited to 13 V.S.A. § 2451, the parent with physical responsibility shall be
12 considered the custodial parent.

13 (f) Both parents shall have access to information and documentation
14 concerning the child, including medical records, educational records, and law
15 enforcement records. The Court may limit access granted by this subsection in
16 the parental rights and responsibilities order.

17 (g) Prior to issuing an order regarding parental rights and responsibilities,
18 the Court may require the parties to participate in mediation to determine
19 whether shared parental rights and responsibilities and equal parent-child
20 contact is in the best interests of the child. The Court shall not order mediation
21 under this subsection unless it has determined that there is no history of abuse

1 and that no physical harm or significant emotional harm to the child, other
2 children, or either parent is likely to result from shared parental rights and
3 responsibilities and equal parent-child contact. The cost of mediation ordered
4 pursuant to this subsection shall be paid by the parties or as directed by the
5 Court.

6 Sec. 2. 15 V.S.A. § 665b is added to read:

7 § 665b. CONDITIONS OF PARENTAL RIGHTS AND
8 RESPONSIBILITIES ORDER

9 (a) Prior to issuing an order on parental rights and responsibilities and
10 parent-child contact pursuant to section 665 of this title, the Court may require
11 the parents to submit, individually or jointly, a proposed shared physical care
12 parenting plan. A proposed parenting plan shall address the following:

13 (1) how the parents will make decisions affecting the child;

14 (2) how the parents will provide a home for the child;

15 (3) how the child's time will be divided between the parents and how
16 each parent will facilitate the child's time with the other parent;

17 (4) arrangements for the child's expenses in addition to court-ordered
18 child support;

19 (5) how the parents will resolve major changes or disagreements
20 affecting the child, including changes that arise due to the child's age and
21 development needs; and

1 (6) any other issues the Court considers appropriate.

2 (b) The Court shall award equal parent-child contact upon the request of
3 either parent unless physical harm or significant emotional harm to the child,
4 other children, or either parent is likely to result.

5 (1) The Court may award equal parent-child contact regardless of
6 whether shared parental rights and responsibilities are awarded.

7 (2) Whenever the Court does not grant equal parent-child contact, it
8 shall give specific findings of fact and conclusions of law that awarding equal
9 parent-child contact is not in the best interests of the child pursuant to section
10 665(b) of this title. The standard of proof on the issue shall be clear and
11 convincing evidence.

12 (c) If shared physical rights and responsibilities are not awarded, except in
13 cases in which the Court determines it would be unsafe for either the parent or
14 child, the parent responsible for providing primary physical care shall support
15 the other parent's relationship with the child.

16 (d) Physical rights and responsibilities awarded solely or primarily to one
17 parent do not affect the other parent's rights and responsibilities as a joint legal
18 custodian of the child. Shared legal rights and responsibilities include equal
19 participation in decisions affecting the child's legal status, medical care,
20 education, extracurricular activities, and religious instruction.

1 (e) If the parents have more than one minor child and the Court awards
2 each parent physical responsibility of one or more children, either parent may
3 request the Court to include a provision in the rights and responsibility order
4 directing the parents to allow visitation between the children. In deciding on a
5 request under this subsection, the Court shall consider whether the request is
6 reasonable and in the best interests of the children.

7 (f) When a parent awarded legal and physical rights of a child cannot act as
8 custodian or caretaker because the parent has died or has been found by a court
9 to be incompetent, the Court shall award legal rights and physical rights of the
10 child to the other parent unless the Court finds that such an award is not in the
11 child's best interests.

12 Sec. 3. 15 V.S.A. § 668 is amended to read:

13 § 668. MODIFICATION OF ORDER

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

20 (b) Whenever a judgment for physical responsibility is modified, the court
21 shall order a child support modification hearing to be set and notice to be given

1 to the parties. Unless good cause is shown to the contrary, the court shall
2 simultaneously issue a temporary order pending the modification hearing, if
3 adjustments to those portions of any existing child support order or wage
4 withholding order that pertain to any child affected by the modification are
5 necessary to assure that support and wages are paid in amounts proportional to
6 the modified allocation of responsibility between the parties.

7 (c) In response to a motion made pursuant to this section, the Court may
8 require the parents to participate in mediation to attempt to resolve the
9 differences between the parties. The Court shall not order mediation under this
10 subsection unless it has determined that there is no history of abuse and that no
11 physical harm or significant emotional harm to the child, other children, or
12 either parent is likely to result.

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on July 1, 2013.