

Comments to 15 V.S.A. §665b
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Issues Regarding Possible Interaction with Vermont's Adoption Statutes
Title 15A

1. "Permanency" of a § 665b Order

Section 665b(c) states that "[a]n order issued in accordance with this section shall be permanent and shall not be subject to modification."

This will affect a respondent's ability to "manifest an ability and willingness to assume legal and physical custody of the minor" as discussed below.

2. Notice of Adoption Proceedings

While a § 665b order essentially terminates any rights of the perpetrator to have contact with the minor, it does not terminate residual parental rights and he/she must still be given notice of any adoption proceedings involving the minor. 15A VSA § 3-401. While this section requires notice to a person who has a right of communication or visitation with the minor, and a §665b order terminates all parent-child contact, notice must still be given to the biological father of the child. 15A VSA § 3-401(a)(3).

If the perpetrator parent is deceased, his/her parents (the minor child's grandparents) must receive notice pursuant to 15A VSA § 3-401(a)(6).

3. Consent to an Adoption

A § 665b order will recognize both biological parents, and 15A VSA § 2-401(a)(1) & (2) requires consent of the woman who gave birth to the minor and the biological father identified by the mother/as otherwise known to the court.

Pursuant to 15A VSA § 2-402, consent is not required by a person whose parental relationship to the minor has been judicially terminated or determined not to exist, or a man (not married to the birth mother) who executes a notarized statement disclaiming any interest in the minor and acknowledging that his statement is irrevocable when executed.

Even after a § 665b Order, the perpetrator parent may still have filed a Notice of Intent to Retain Parental Rights pursuant to 15A VSA § 1-110, which will require notice of the adoption proceedings. 15A VSA § 2-401(a)(4).

4. Termination of Parental Rights

After a § 665b Order has been issued, the perpetrator parent could still attempt to defend himself/herself in the termination of his/her parental relationship under 15A VSA § 3-504. Without running through the entire statute, I am highlighting some of the issues that may arise in the context of a Title 15A termination proceeding from a §665b order.

While the standard of proof for a §665b Order is clear and convincing evidence, the order only terminates contact between the perpetrator parent and the minor with a *fraction* of the evidence considered under 15A VSA § 3-504 to terminate residual parental rights. More specifically:

- It only considers whether the child was conceived as a result of a sexual assault, without consideration of any other “parental” factors;
- A conviction alone in 13 VSA Ch. 72 (or similar conviction in another jurisdiction) is sufficient evidence under 665b, without inquiring to the circumstances of the conviction; and
- A conviction of sexual assault is not required under 665b, allowing the court to consider “other evidence of a sexual assault”.

If a § 665b Order is issued, the perpetrator parent may still have a defense by proving merely by a preponderance of the evidence that he/she had good cause for not exercising the following parental responsibilities:

- 15A VSA §§ 3-504 (a)(1)(C), (a)(2)(B) – regularly communicate or visit with the minor – a § 665b order forbids parent-child contact and immediately terminates any current PCC order;
- 15A VSA §§ 3-504 (a)(1)(D), (a)(2)(C) – manifest an ability and willingness to assume legal and physical custody of the minor – again, forbidden under a § 665b order because the award of “permanent sole” PRR, with no PCC, is non-modifiable;

A § 665b order may still require child support payments. Thus, the perpetrator parent may be able to prove he/she did provide financial support for the minor pursuant to 15A VSA §§ 3-504 (a)(1)(A) or (a)(2)(A).

Findings of sexual assault in a § 665b order are much narrower than those required to terminate parental rights (see above). 15A VSA § 3-504(a)(3) requires more, and allows the perpetrator parent to defend his/her criminal action(s) for purposes of termination:

- Petitioners must prove by clear and convincing evidence that the respondent has:
 - (1) been *convicted* of a crime of violence, or
 - (2) been found to have violated an RFA by an act of violence; and
 - (3) the facts of the crime or violation indicate he/she is unfit to maintain parent-child relationship.

- Even if the petitioner satisfies the burden of proof, the respondent may prove, by clear and convincing evidence that termination is not justified for compelling reasons.

The perpetrator parent could overcome grounds for termination under 15A VSA §§ 3-504(a) or (b), and the petitioners would have to then prove by clear and convincing evidence factors under § 3-504(b)(1)-(4), and that termination is in the best interests of the minor.

These circumstances of conception are considered in the adoption termination statute at 15A VSA § 3-504(b)(4): placing the minor in the respondents legal or physical custody would pose a risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minors conception, or the respondent’s behavior during the pregnancy were since the minor’s birth indicates that he or she is unfit to maintain a relationship of parent and child with the minor.

A § 665b Order denies the perpetrator parent the opportunity to parent (without any leeway for judicial discretion to examine the circumstances of the assault) – a fundamental constitutional right – and therefore could potentially make termination more difficult for purposes of adoption while petitioners await the result of constitutional challenges to the new statute.

5. Other State Statutes similar to 665b

NEBRASKA

125C.210. Child conceived as result of sexual assault: Rights of natural father convicted of sexual assault; rights when father is spouse of victim; rebuttable presumption upon divorce: If a child is conceived as the result of a sexual assault and the person convicted is the natural father of the child, the person has no right to custody of or visitation with the child unless the natural mother or legal guardian consents thereto and it is in the best interest of the child.

NEW JERSEY

9:2-4.1. Custody and visitation denied to person fathering a child through rape; obligation to support minor child unaffected: A person convicted of sexual assault shall not be awarded custody or visitation rights to any minor child, including a minor child who was born as a result of or was the victim of the sexual assault, except upon a showing of clear and convincing evidence that it is in the best interest of the child for custody or visitation rights to be awarded.

ILLINOIS

750 § 45/6.5. Custody or visitation prohibited to men to father through sexual assault or sexual abuse: Requires guilty or nolo plea to sexual assault charge, or “at a fact-finding hearing, is found by clear and convincing evidence to have committed an act of non-consensual sexual penetration for his conduct in fathering that child.”

HAWAII

§ 571-46. No natural parent shall be granted custody or visitation with a child if the natural parent has been convicted in any state of rape or sexual assault and the child was conceived as a result of that offense.

§ 1-110. Notice of intent to retain parental rights.

Vermont Statutes

Title 15A. Adoption Act

Article 1. GENERAL PROVISIONS

Current through 2013 Legislative Session

§ 1-110. Notice of intent to retain parental rights

- (a) At any time, a parent or alleged parent of a child born in this state may file in any probate division of the superior court in this state a notice of intent to retain parental rights. The notice shall specify the name and address of the person filing it, the name and last known address of the other parent of the minor, the name of the minor, if known, and the date or approximate date of the minor's date of birth.
- (b) Each probate division of the superior court shall forward a notice filed with that court under subsection (a) of this section, to the probate division of the superior court in the district of Chittenden, which shall serve as a central repository for all such notices.
- (c) When a petition to adopt a minor is filed in this state, the register of the probate division of the superior court in which it is filed shall determine as of the date of the petition whether or not a notice has been filed under this section with respect to the minor to be adopted.

Cite as 15A V.S.A. § 1-110

History. Added 1995, No. 161 (Adj. Sess.), § 1; amended 2009, No. 154 (Adj. Sess.), §238a, eff. Feb. 1, 2011.

§ 2-401. Persons whose consent to adoption is required.

Vermont Statutes

Title 15A. Adoption Act

Article 2. ADOPTION OF MINORS

Current through 2013 Legislative Session

§ 2-401. Persons whose consent to adoption is required

- (a) Unless consent is not required or is dispensed with by section 2-402 of this title, in a direct placement of a minor for adoption by a parent or guardian authorized under this title to place the minor, a petition to adopt the minor may be granted only if consent to the adoption has been executed by:
- (1) the woman who gave birth to the minor;
 - (2) the biological father identified by the mother or as otherwise known to the court;
 - (3) a man who is or has been married to the woman if the minor was born during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation;
 - (4) a man who:
 - (A) was not married to the minor's mother at the time of the child's birth;
 - (B) has acknowledged his paternity of the minor by executing a voluntary acknowledgment of paternity under 15 V.S.A. § 307 or has filed a notice to retain parental rights under section 1-110 of this title; and
 - (C) has demonstrated a commitment to the responsibilities of parenthood by establishing a custodial, personal or financial relationship with the child, unless he was prevented from demonstrating such commitment or was unable to demonstrate such commitment; and
 - (5) the minor's guardian if expressly authorized by a court to consent to the minor's adoption; or
 - (6) the current adoptive or other legally recognized mother and father of the minor.
- (b) Unless consent is not required under section 2-402 of this title, in a placement of a minor for adoption by an agency authorized under this title to place the minor, a petition to adopt the minor may be granted only if consent to the adoption has been executed by:

- (1) the agency that placed the minor for adoption; and
 - (2) a person described in subsection (a) who has not relinquished the minor or had his or her parental rights terminated.
- (c) Unless the court dispenses with the minor's consent, a petition to adopt a minor who has attained 14 years of age may be granted only if, in addition to any consent required by subsections (a) and (b) of this section, the minor has executed an informed consent to the adoption.

Cite as 15A V.S.A. § 2-401

History. Added 1995, No. 161 (Adj. Sess.), § 1; amended 2009, No. 3, §12a, eff . Sept. 1, 2009.

§ 2-402. Persons whose consent not required.

Vermont Statutes

Title 15A. Adoption Act

Article 2. ADOPTION OF MINORS

Current through 2013 Legislative Session

§ 2-402. Persons whose consent not required

- (a) Consent to an adoption of a minor is not required of:
- (1) a person who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to this part of this article;
 - (2) a person whose parental relationship to the minor has been judicially terminated or determined not to exist;
 - (3) a man who has not been married to the woman who gave birth to the minor and who, after the conception of the minor, executes a notarized statement denying paternity or disclaiming any interest in the minor and acknowledging that his statement is irrevocable when executed;
 - (4) the personal representative of a deceased parent's estate; or
 - (5) a parent or other person who has not executed a consent or a relinquishment and who fails to file an answer or make an appearance in a proceeding for adoption or for termination of a parental relationship within the requisite time after service of notice of the proceeding.
- (b) The court may dispense with the consent of:
- (1) a guardian or an agency whose consent is otherwise required upon a finding that the consent is being withheld unreasonably, contrary to the best interest of a minor adoptee; or
 - (2) a minor adoptee who has attained 14 years of age upon a finding that it is not in the best interest of the minor to require the consent.

Cite as 15A V.S.A. § 2-402

History. Added 1995, No. 161 (Adj. Sess.), § 1.

§ 3-401. Service of notice.

Vermont Statutes

Title 15A. Adoption Act

Article 3. GENERAL PROCEDURE FOR ADOPTION

Current through 2013 Legislative Session

§ 3-401. Service of notice

- (a) Unless notice has been waived, notice of a proceeding for adoption of a minor shall be served, within 30 days after a petition for adoption is filed, upon:
- (1) a person whose consent to the adoption is required under section 2-401 of this title, but notice need not be served upon a person whose parental relationship to the minor or whose status as a guardian has been terminated;
 - (2) an agency whose consent to the adoption is required under section 2-401;
 - (3) a person whom the petitioner knows is claiming to be or who is named as the father or possible father of the minor adoptee and whose paternity of the minor has not been judicially determined, but notice need not be served upon a man who has executed a verified statement, as described in subdivision 2-402(a)(3) of this title, denying paternity or disclaiming any interest in the minor;
 - (4) a person other than the petitioner who has legal or physical custody of the minor adoptee or who has a right of communication or visitation with the minor under an existing court order issued by a court in this or another state;
 - (5) the spouse of the petitioner if the spouse has not joined in the petition; and
 - (6) a grandparent of a minor adoptee if the grandparent's child is a deceased parent of the minor and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the minor had not been terminated.
- (b) The court shall require notice of a proceeding for adoption of a minor to be served upon any person the court finds, at any time during the proceeding, is:
- (1) a person described in subsection (a) of this section who has not been given notice;
 - (2) a person who has revoked a consent or relinquishment pursuant to subsection 2-408(a) or 2-409(a) of this title or is attempting to have a consent or relinquishment set aside pursuant to subsection 2-408(b) or 2-409(b) of this title; or

- (3) a person who, on the basis of a previous relationship with the minor adoptee, a parent, an alleged parent, or the petitioner, can provide information that is relevant to the proposed adoption and that the court in its discretion wants to hear.
- (c) If, at any time in the proceeding, it appears to the court that there is an alleged father of the adoptee who has not been given notice, the court shall require notice of the proceeding to be given to him.
- (d) The court shall send a duplicate copy of the petition to the department. The department shall determine whether or not the petitioners have been the subject of a substantiated complaint filed with the department, and shall report its findings to the court within 14 days of receiving the petition. If a substantiated complaint has been filed with the department, the department shall include a copy of the investigative report that relates to the complaint with the findings it files with the court.

Cite as 15A V.S.A. § 3-401

History. Added 1995, No. 161 (Adj. Sess.), § 1.

§ 3-504. Grounds for terminating relationship of parent and child.

Vermont Statutes

Title 15A. Adoption Act

Article 3. GENERAL PROCEDURE FOR ADOPTION

Current through 2013 Legislative Session

§ 3-504. Grounds for terminating relationship of parent and child

- (a) If a respondent answers or appears at the hearing and asserts parental rights, the court shall proceed with the hearing expeditiously. If the court finds, upon clear and convincing evidence, that any one of the following grounds exists and that termination is in the best interest of the minor, the court shall order the termination of any parental relationship of the respondent to the minor:
- (1) In the case of a minor under the age of six months at the time the petition is filed, the respondent did not exercise parental responsibility once he or she knew or should have known of the minor's birth or expected birth. In making a determination under this subdivision, the court shall consider all relevant factors, which may include the respondent's failure to:
 - (A) pay reasonable prenatal, natal, and postnatal expenses in accordance with his or her financial means;
 - (B) make reasonable and consistent payments, in accordance with his or her financial means, for the support of the minor;
 - (C) regularly communicate or visit with the minor; or
 - (D) manifest an ability and willingness to assume legal and physical custody of the minor.
 - (2) In the case of a minor over the age of six months at the time the petition is filed, the respondent did not exercise parental responsibility for a period of at least six months immediately preceding the filing of the petition. In making a determination under this subdivision, the court shall consider all relevant factors, which may include the respondent's failure to:
 - (A) make reasonable and consistent payments, in accordance with his or her financial means, for the support of the minor, although legally obligated to do so;
 - (B) regularly communicate or visit with the minor; or

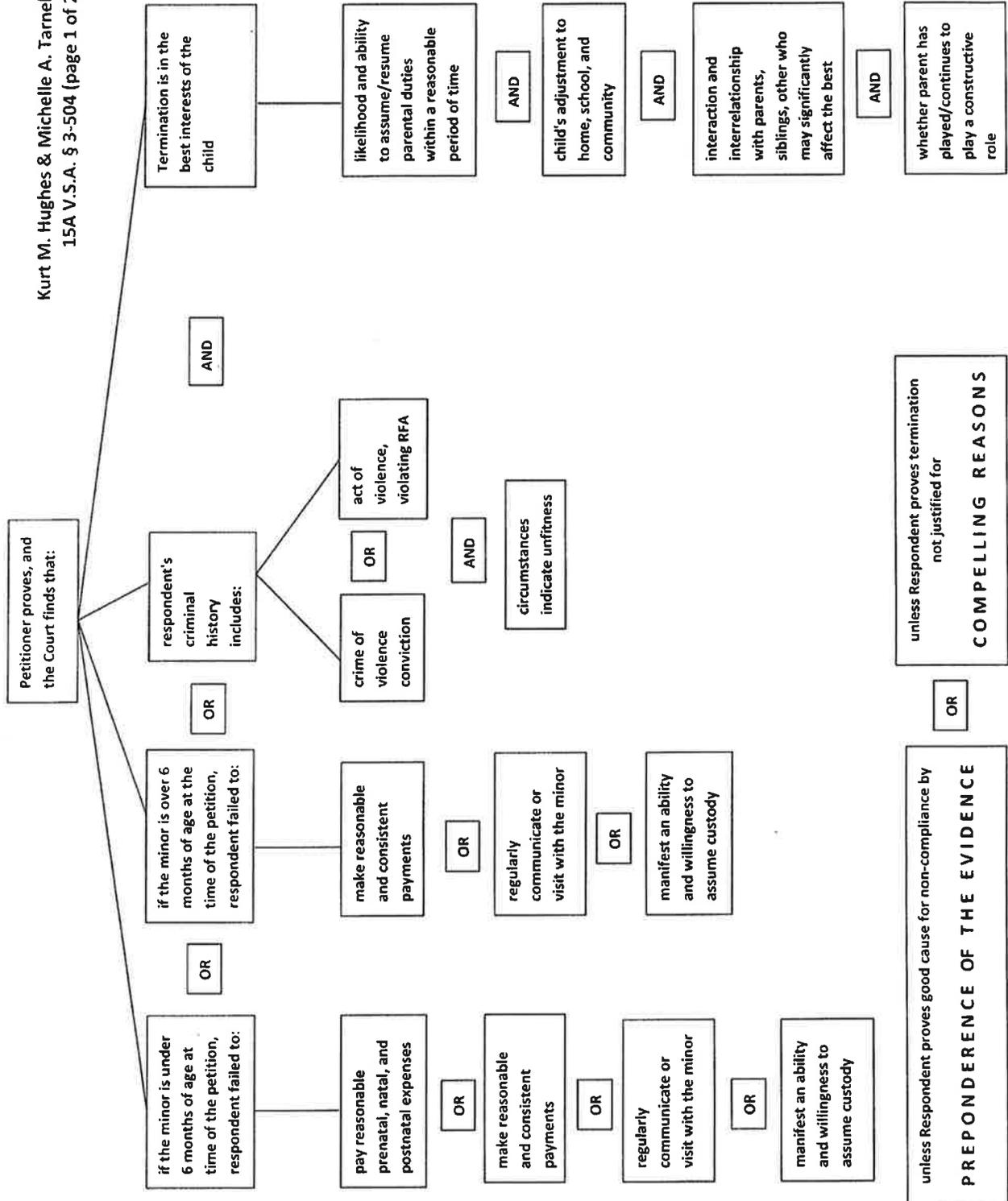
- (C) during any time the minor was not in the physical custody of the other parent, to manifest an ability and willingness to assume legal and physical custody of the minor.
 - (3) The respondent has been convicted of a crime of violence or has been found by a court of competent jurisdiction to have committed an act of violence which violated a restraining or protective order, and the facts of the crime or violation indicate that the respondent is unfit to maintain a relationship of parent and child with the minor.
- (b) If the respondent has proved by a preponderance of the evidence that he or she had good cause for not complying with subdivision (a)(1) or (2) of this section or that, for compelling reasons, termination is not justified under subdivision (a)(3) of this section, the court may not terminate the respondent's parental rights to a minor except upon a finding by clear and convincing evidence that any one of the following grounds exists and that termination is in the best interest of the minor:
- (1) Once the respondent no longer had good cause for not complying with the requirements of subdivisions (a)(1) or (2), he or she failed to assume parental responsibilities as promptly and fully as circumstances permitted.
 - (2) The respondent, after being afforded a reasonable opportunity to do so, would not have the ability and disposition to:
 - (A) provide the child with love, affection and guidance;
 - (B) meet the child's present and future physical and emotional needs; or
 - (C) provide the child with adequate food, clothing, medical care, other material needs, education, and a safe environment.
 - (3) At the time of the hearing the respondent has a relationship with another person who would significantly and adversely affect the child.
 - (4) Placing the minor in the respondent's legal or physical custody would pose a risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minor's conception, or the respondent's behavior during the pregnancy or since the minor's birth indicates that he or she is unfit to maintain a relationship of parent and child with the minor.
- (c) At the time of the hearing under this section the court shall consider the best interests of the child in accordance with the following criteria:
- (1) the likelihood that the respondent will be able to assume or resume his or her parental duties within a reasonable period of time;
 - (2) the child's adjustment to his or her home, school, and community;

- (3) the interaction and interrelationship of the child with his or her parents, siblings, and any other person who may significantly affect the child's best interests; and
 - (4) whether the parent or alleged parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.
- (d) If the respondent does not answer or appear or, in the case of an alleged father, file a claim of paternity as provided in subdivision 3-503(b)(2) of this title, or cannot be notified because the person's identity or whereabouts is unknown, the court may order the termination of any parental relationship to the minor.

Cite as 15A V.S.A. § 3-504

History. Added 1995, No. 161 (Adj. Sess.), § 1.

C L E A R & C O N V I N C I N G



Respondent proved good cause for non-compliance by

PREPONDERANCE OF THE EVIDENCE

Respondent proved termination not justified for

COMPELLING REASONS

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15A V.S.A. § 3-504 (page 2 of 2)

C L E A R & C O N V I N C I N G

failure assume
parental
responsibility
once
respondent no
longer had
good cause
not to comply

OR

after being
afforded the
opportunity,
would not
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ability and
disposition to:

OR

at the time of
hearing,
respondent has a
relationship with
another person
who would
significantly and
adversely affect
the child

OR

placing the child in
respondent's custody
would pose risk of
substantial harm to
the physical or
psychological well-
being of the child,
indicating unfitness
to maintain a parent-
child relationship,
because:

AND

Termination is in the
best interests of the
child

likelihood and ability
to assume/resume
parental duties
within a reasonable
period of time

AND

child's adjustment to
home, school, and
community

AND

Interaction and
interrelationship with
parents, siblings, other
who may significantly
affect the best
interests

AND

whether parent has
played/continues to
play a constructive
role

of the
circumstances of
the child's
conception

OR

respondent's
behavior during
the pregnancy or
since the child's
birth

provide child with
love, affection,
and guidance

OR

meet child's
present and future
needs

OR

provide child with
adequate food,
clothing, medical
care, material
needs, education,
and a safe
environment