

1 H.166

2 Introduced by Representatives Masland of Thetford, Briglin of Thetford, and
3 Yantachka of Charlotte

4 Referred to Committee on

5 Date:

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

8 Statement of purpose of bill as introduced: This bill proposes to require the
9 court to order shared parental rights and responsibilities and equal parent-child
10 contact, provided it is in the best interests of the child.

11 An act relating to shared parental rights and responsibilities and equal
12 parent-child contact

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

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

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

17 (a) In an action under this chapter, the ~~Court~~ court shall make an order
18 concerning parental rights and responsibilities of any minor child of the
19 parties. The ~~Court~~ court may order parental rights and responsibilities to be
20 awarded primarily or solely to one parent or divided or shared between the

1 parents on such terms and conditions as serve the best interests of the child.

2 ~~When the parents cannot agree to divide or share parental rights and~~
3 ~~responsibilities, the Court shall award parental rights and responsibilities~~
4 ~~primarily or solely to one parent.~~

5 (1) To the extent that it is reasonable and in the best interests of the
6 child, the court shall order shared parental rights and responsibilities and equal
7 parent-child contact.

8 (A) The court shall consider granting shared parental rights and
9 responsibilities and equal parent-child contact upon a request by either parent.

10 Both parents shall be allowed an opportunity to submit a parenting plan when
11 there is a request for the court to consider shared parental rights and equal
12 parent-child contact.

13 (B) When the court does not award shared parental rights and
14 responsibilities and equal parent-child contact, the court shall cite by clear and
15 convincing evidence the factors in subsection (b) of this section that make
16 shared parental rights and responsibilities and equal parent-child contact
17 unreasonable and not in the best interests of the child.

18 (2) If the court finds a history of abuse, there shall be a rebuttable
19 presumption against awarding shared parental rights and responsibilities and
20 equal parent-child contact.

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

5 (4) If the court finds a history of abuse and a parent has relocated to
6 avoid further abuse, the court shall not consider the relocation as a factor
7 against awarding parental rights and responsibilities and parent-child contact to
8 the relocated parent.

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

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

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

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

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

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

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

10 (7) ~~the relationship of the child with any other person who may~~
11 ~~significantly affect the child~~ the interaction and relationship of the child with
12 his or her grandparents, siblings, persons cohabitating with a parent of the
13 child, any other residents of the household, or persons who may significantly
14 affect the child's best interests;

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

18 (9) ~~evidence of abuse, as defined in section 1101 of this title, and the~~
19 ~~impact of the abuse on the child and on the relationship between the child and~~
20 ~~the abusing parent.~~ including the issuance of a protective order against the

1 parent or the issuance of a court order or consent agreement, the issuance of an
2 emergency order, or a conviction for domestic assault;

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

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

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

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

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

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

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

19 * * *

20 (g) Both parents shall have access to information and documentation
21 concerning the child, including medical records, educational records, and law

1 enforcement records. In the parental rights and responsibilities order, the court
2 may limit access granted by this subsection.

3 (h) Prior to issuing an order regarding parental rights and responsibilities,
4 the court may require the parties to participate in mediation to determine
5 whether shared parental rights and responsibilities and equal parent-child
6 contact are in the best interests of the child. The court shall not order
7 mediation under this subsection unless it has determined that there is no history
8 of abuse and that no physical harm or significant emotional harm to the child,
9 other children, or either parent is likely to result from shared parental rights
10 and responsibilities and equal parent-child contact. The cost of mediation
11 ordered pursuant to this subsection shall be paid by the parties or as directed by
12 the court.

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

14 § 665b. CONDITIONS OF PARENTAL RIGHTS AND
15 RESPONSIBILITIES ORDER

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

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

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

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

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

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

8 (6) any other issues the court considers appropriate.

9 (b) The court shall award equal parent-child contact upon the request of
10 either parent unless physical harm or significant emotional harm to the child,
11 other children, or either parent is likely to result.

12 (1) The court may award equal parent-child contact regardless of
13 whether shared parental rights and responsibilities are awarded.

14 (2) Whenever the court does not grant equal parent-child contact, it shall
15 give specific findings of fact and conclusions of law that awarding equal
16 parent-child contact is not in the best interests of the child pursuant to
17 subsection 665(b) of this title. The standard of proof on the issue shall be clear
18 and convincing evidence.

19 (c) If shared physical rights and responsibilities are not awarded, except in
20 cases in which the court determines it would be unsafe for either the parent or

1 child, the parent responsible for providing primary physical care shall support
2 the other parent's relationship with the child.

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

8 (e) If the parents have more than one minor child and the court awards each
9 parent physical responsibility for one or more children, either parent may
10 request the court to include a provision in the rights and responsibility order
11 directing the parents to allow visitation between the children. In deciding on a
12 request under this subsection, the court shall consider whether the request is
13 reasonable and in the best interests of the children.

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

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

2 § 668. MODIFICATION OF ORDER

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

9 (b) Whenever a judgment for physical responsibility is modified, the ~~Court~~
10 court shall order a child support modification hearing to be set and notice to be
11 given to the parties. Unless good cause is shown to the contrary, the ~~Court~~
12 court shall simultaneously issue a temporary order pending the modification
13 hearing, if adjustments to those portions of any existing child support order or
14 wage withholding order that pertain to any child affected by the modification
15 are necessary to ~~assure~~ ensure that support and wages are paid in amounts
16 proportional to the modified allocation of responsibility between the parties.

17 (c) A final order related to parental rights and responsibilities and ~~parent~~
18 ~~child~~ parent-child contact issued pursuant to subdivision 665(f)(1) of this title
19 shall not be subject to modification. A party may file a motion for
20 modification of an order related to parental rights and responsibilities and
21 ~~parent-child~~ parent-child contact issued pursuant to subdivision 665(f)(2) of

1 this title only upon a showing of extraordinary, real, substantial, and
2 unanticipated change of circumstances.

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

9 Sec. 4. EFFECTIVE DATE

10 This act shall take effect on July 1, 2017.