

H.603

An act relating to human trafficking

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

Sec. 1. 15 V.S.A. § 516 is amended to read:

§ 516. FORCE OR FRAUD

A civil marriage may be annulled during the lifetime of the parties, or one of them, on the ground that the consent of one of the parties was obtained by force or fraud, or the threat of force, or other forms of coercion or deception on the complaint of the party whose consent was so obtained or of the parent or guardian of such party or of some relative interested to contest the validity of the marriage. When such proceedings have been commenced and the party whose consent was so obtained dies before final decree, a parent or relative interested to contest the validity of the civil marriage may enter and prosecute such complaint. ~~A civil marriage shall not be annulled on such ground if, before the commencement of the action, the parties voluntarily cohabited as husband and wife.~~

Sec. 2. 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 shall make an order concerning parental rights and responsibilities of any minor child of the parties. The 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 shall award parental rights and responsibilities primarily or solely to one parent.

(b) In making an order under this section, the 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.

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

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

(e) The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including

13 V.S.A. § 2451, the parent with physical responsibility shall be considered the custodial 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 not 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, or that the nonmoving parent was convicted of human trafficking pursuant to 13 V.S.A. § 2652, and the moving parent was the trafficked victim. 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, 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.

(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 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, or that the moving parent was trafficked by the nonmoving parent pursuant to 13 V.S.A. § 2652 and the court finds by a preponderance of the evidence that such an order is in the best ~~interest~~ interests of the child. 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. For purposes of this subdivision ~~(f)~~(2):

(A) 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

(B) 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.

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

(4) Upon issuance of a rights and responsibilities order pursuant to this subsection, 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. An order issued in accordance with this subdivision shall be permanent and shall not be subject to modification.

Sec. 3. 15A V.S.A. § 3-504 is amended to read:

§ 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~~ interests 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 of age 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 of age 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~~ that 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.

(4) The respondent has committed a sexual assault resulting in the conception of a child.

(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) or (4) 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~~ interests of the minor:

(1) Once the respondent no longer had good cause for not complying with the requirements of ~~subdivisions~~ subdivision (a)(1) or (2) of this section, 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 of the child; 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.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.