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H.634

Introduced by Representatives McCullough of Williston and Townsend of
South Burlington

Referred to Committee on

Date:

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

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

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

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

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 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 awarded primarily or solely
to one parent or divided or shared between the parents on such terms and

1 conditions as serve the best interests of the child. ~~When the parents cannot~~
2 ~~agree to divide or share parental rights and responsibilities, the court shall~~
3 ~~award parental rights and responsibilities primarily or solely to one parent.~~

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

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 shall be guided by the
10 best interests of the child; and shall consider at least the following factors:

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

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

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

19 (4) the quality of the child's adjustment to the child's present housing,
20 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 interaction and relationship of the child with ~~any other person~~ his
11 or her grandparents, siblings, persons cohabiting with a parent of the child, any
12 other residents of the household, or persons who may significantly affect the
13 best interests of the child;

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

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

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

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

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

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

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

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

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

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

1 including 13 V.S.A. § 2451, the parent with physical responsibility shall be
2 considered the custodial parent.

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

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

1 and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and
2 similar offenses in other jurisdictions.

3 (2) The court may enter an order awarding sole parental rights and
4 responsibilities to one parent and denying all parent-child contact between the
5 other parent and a child if the court finds by clear and convincing evidence that
6 the child was conceived as a result of the nonmoving parent sexually assaulting
7 or sexually exploiting the moving parent and the court finds by a
8 preponderance of the evidence that such an order is in the best ~~interest~~ interests
9 of the child. A conviction is not required under this subdivision, and the court
10 may consider other evidence of sexual assault or sexual exploitation in making
11 its determination. For purposes of this subdivision ~~(#)(2)~~:

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

17 (B) sexual exploitation shall include sexual exploitation of an inmate
18 as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in
19 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A.
20 § 1379, and similar offenses in other jurisdictions.

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

3 (4) Upon issuance of a rights and responsibilities order pursuant to this
4 subsection, the court shall not issue a parent-child contact order and shall
5 terminate any existing parent-child contact order concerning the child and the
6 nonmoving parent. An order issued in accordance with this subdivision shall
7 be permanent and shall not be subject to modification.

8 (g) In general, both parents shall have access to information and
9 documentation concerning the child, including medical records, educational
10 records, and law enforcement records. The court may limit access granted by
11 this subsection in the parental rights and responsibilities order.

12 (h) Prior to issuing an order regarding parental rights and responsibilities,
13 the court may require the parties to participate in mediation to determine
14 whether shared parental rights and responsibilities and equal parent-child
15 contact is in the best interests of the child. The court shall not order mediation
16 under this subsection unless it has determined that there is no history of abuse
17 and that no physical harm or significant emotional harm to the child, other
18 children, or either parent is likely to result from shared parental rights and
19 responsibilities and equal parent-child contact. The cost of mediation ordered
20 pursuant to this subsection shall be paid by the parties or as directed by
21 the court.

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

2 § 665b. CONDITIONS OF PARENTAL RIGHTS AND
3 RESPONSIBILITIES ORDER

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) If the parents have more than one minor child and the court awards each
18 parent physical responsibility of one or more children, either parent may
19 request the court to include a provision in the rights and responsibilities order
20 directing the parents to allow visitation between the children. In deciding on a

1 request under this subsection, the court shall consider whether the request is
2 reasonable and in the best interests of the children.

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

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

9 § 668. MODIFICATION OF ORDER

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

16 (b) Whenever a judgment for physical responsibility is modified, the court
17 shall order a child support modification hearing to be set and notice to be given
18 to the parties. Unless good cause is shown to the contrary, the court shall
19 simultaneously issue a temporary order pending the modification hearing, if
20 adjustments to those portions of any existing child support order or wage
21 withholding order that pertain to any child affected by the modification are

1 necessary to ~~assure~~ ensure that support and wages are paid in amounts
2 proportional to the modified allocation of responsibility between the parties.

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

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

15 Sec. 4. EFFECTIVE DATE

16 This act shall take effect on July 1, 2018.