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H.603

Introduced by Representatives Sullivan of Dorset, Buckholz of Hartford, Bock of Chester, Botzow of Pownal, Brumsted of Shelburne, Burke of Brattleboro, Carr of Brandon, Christensen of Weathersfield, Christie of Hartford, Dunn of Essex, Fagan of Rutland City, Forguites of Springfield, Frenier of Chelsea, Gannon of Wilmington, Gardner of Richmond, Hooper of Randolph, Houghton of Essex, Joseph of North Hero, LaLonde of South Burlington, Morris of Bennington, Morrissey of Bennington, Murphy of Fairfax, Partridge of Windham, Weed of Enosburgh, and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Family law; annulment; termination of parental rights

Statement of purpose of bill as introduced: This bill proposes to: 1) allow for the annulment of a civil marriage in cases of force or fraud even if the parties cohabited after the marriage; 2) provide that clear and convincing evidence of sexual assault resulting in the conception of a child is sufficient for a court to terminate the parental rights of the offender; and 3) provide that a conviction of human trafficking or clear and convincing evidence of human trafficking is grounds for the court to deny all parent-child contact with the offending parent.

1 An act relating to human trafficking

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

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

4 § 516. FORCE OR FRAUD

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

16 Sec. 2. 15 V.S.A. § 665 is amended to read:

17 § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF
18 THE CHILD

19 (a) In an action under this chapter, the court shall make an order concerning
20 parental rights and responsibilities of any minor child of the parties. The court
21 may order parental rights and responsibilities to be divided or shared between

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

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

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

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

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

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

1 (6) the quality of the child's relationship with the primary care provider,
2 if appropriate given the child's age and development;

3 (7) the relationship of the child with any other person who may
4 significantly affect the child;

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

8 (9) evidence of abuse, as defined in section 1101 of this title, and the
9 impact of the abuse on the child and on the relationship between the child and
10 the abusing parent.

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 refers to a custodial parent, including

1 13 V.S.A. § 2451, the parent with physical responsibility shall be considered
2 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, or that the nonmoving parent
18 was convicted of human trafficking pursuant to 13 V.S.A. § 2652, and the
19 moving parent was the trafficked victim. As used in this subdivision, sexual
20 assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d),
21 and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated

1 sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious
2 conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in
3 other jurisdictions.

4 (2) The court may enter an order awarding sole parental rights and
5 responsibilities to one parent and denying all parent-child contact between the
6 other parent and a child if the court finds by clear and convincing evidence that
7 the child was conceived as a result of the nonmoving parent sexually assaulting
8 or sexually exploiting the moving parent, or that the moving parent was
9 trafficked by the nonmoving parent pursuant to 13 V.S.A. § 2652 and the court
10 finds by a preponderance of the evidence that such an order is in the best
11 ~~interest~~ interests of the child. A conviction is not required under this
12 subdivision, and the court may consider other evidence of sexual assault or
13 sexual exploitation in making its determination. For purposes of this
14 subdivision ~~(f)~~(2):

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

20 (B) sexual exploitation shall include sexual exploitation of an inmate
21 as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in

1 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A.
2 § 1379, and similar offenses in other jurisdictions.

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

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

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

11 § 3-504. GROUNDS FOR TERMINATING RELATIONSHIP OF PARENT
12 AND CHILD

13 (a) If a respondent answers or appears at the hearing and asserts parental
14 rights, the court shall proceed with the hearing expeditiously. If the court
15 finds, upon clear and convincing evidence, that any one of the following
16 grounds exists and that termination is in the best ~~interest~~ interests of the minor,
17 the court shall order the termination of any parental relationship of the
18 respondent to the minor:

19 (1) In the case of a minor under ~~the age of~~ six months of age at the time
20 the petition is filed, the respondent did not exercise parental responsibility once
21 he or she knew or should have known of the minor's birth or expected birth. In

1 making a determination under this subdivision, the court shall consider all
2 relevant factors, which may include the respondent's failure to:

3 (A) pay reasonable prenatal, natal, and postnatal expenses in
4 accordance with his or her financial means;

5 (B) make reasonable and consistent payments, in accordance with his
6 or her financial means, for the support of the minor;

7 (C) regularly communicate or visit with the minor; or

8 (D) manifest an ability and willingness to assume legal and physical
9 custody of the minor.

10 (2) In the case of a minor over ~~the age of~~ six months of age at the time
11 the petition is filed, the respondent did not exercise parental responsibility for a
12 period of at least six months immediately preceding the filing of the petition.

13 In making a determination under this subdivision, the court shall consider all
14 relevant factors, which may include the respondent's failure to:

15 (A) make reasonable and consistent payments, in accordance with his
16 or her financial means, for the support of the minor, although legally obligated
17 to do so;

18 (B) regularly communicate or visit with the minor; or

19 (C) during any time the minor was not in the physical custody of the
20 other parent, ~~to~~ manifest an ability and willingness to assume legal and
21 physical custody of the minor.

1 (3) The respondent has been convicted of a crime of violence or has
2 been found by a court of competent jurisdiction to have committed an act of
3 violence ~~which~~ that violated a restraining or protective order, and the facts of
4 the crime or violation indicate that the respondent is unfit to maintain a
5 relationship of parent and child with the minor.

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

8 (b) If the respondent has proved by a preponderance of the evidence that he
9 or she had good cause for not complying with subdivision (a)(1) or (2) of this
10 section or that, for compelling reasons, termination is not justified under
11 subdivision (a)(3) or (4) of this section, the court may not terminate the
12 respondent's parental rights to a minor except upon a finding by clear and
13 convincing evidence that any one of the following grounds exists and that
14 termination is in the best ~~interest~~ interests of the minor:

15 (1) Once the respondent no longer had good cause for not complying
16 with the requirements of ~~subdivisions~~ subdivision (a)(1) or (2) of this section,
17 he or she failed to assume parental responsibilities as promptly and fully as
18 circumstances permitted.

19 (2) The respondent, after being afforded a reasonable opportunity to do
20 so, would not have the ability and disposition to:

21 (A) provide the child with love, affection, and guidance;

1 (B) meet the child's present and future physical and emotional
2 needs; or

3 (C) provide the child with adequate food, clothing, medical care,
4 other material needs, education, and a safe environment.

5 (3) At the time of the hearing, the respondent has a relationship with
6 another person who would significantly and adversely affect the child.

7 (4) Placing the minor in the respondent's legal or physical custody
8 would pose a risk of substantial harm to the physical or psychological well-
9 being of the minor because the circumstances of the minor's conception, or the
10 respondent's behavior during the pregnancy or since the minor's birth indicates
11 that he or she is unfit to maintain a relationship of parent and child with the
12 minor.

13 (c) At the time of the hearing under this section, the court shall consider the
14 best interests of the child in accordance with the following criteria:

15 (1) the likelihood that the respondent will be able to assume or resume
16 his or her parental duties within a reasonable period of time;

17 (2) the child's adjustment to his or her home, school, and community;

18 (3) the interaction and interrelationship of the child with his or her
19 parents, siblings, and any other person who may significantly affect the ~~child's~~
20 best interests of the child; and

1 (4) whether the parent or alleged parent has played and continues to play
2 a constructive role, including personal contact and demonstrated love and
3 affection, in the child's welfare.

4 (d) If the respondent does not answer or appear or, in the case of an alleged
5 father, file a claim of paternity as provided in subdivision 3-503(b)(2) of this
6 title, or cannot be notified because the person's identity or whereabouts is
7 unknown, the court may order the termination of any parental relationship to
8 the minor.

9 Sec. 4. EFFECTIVE DATE

10 This act shall take effect on passage.