

1 H.13

2 Introduced by Representative McCullough of Williston

3 Referred to Committee on

4 Date:

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

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

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

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

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

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

16 (a) In an action under this chapter, the court shall make an order concerning
17 parental rights and responsibilities of any minor child of the parties. The court
18 may order parental rights and responsibilities to be awarded primarily or solely
19 to one parent or divided or shared between the parents on such terms and
20 conditions as serve the best interests of the child. ~~When the parents cannot~~

1 ~~agree to divide or share parental rights and responsibilities, the court shall~~
2 ~~award parental rights and responsibilities primarily or solely to one parent.~~

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

7 (A) The court shall consider granting shared parental rights and
8 responsibilities and equal parent-child contact upon a request by either parent.
9 Both parents shall be allowed an opportunity to submit a parenting plan when
10 there is a request for the court to consider shared parental rights and equal
11 parent-child contact.

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

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

20 (3) The court shall consider a parent's unreasonable denial of continuing
21 contact with the other parent as a significant factor in determining parental

1 rights and responsibilities. Denial of continuing contact based on a just cause,
2 such as a history of abuse, shall be deemed reasonable.

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

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

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

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

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

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

19 (5) the ability and disposition of each parent to foster a positive
20 relationship and frequent and continuing contact with the other parent,

1 including physical contact, except where contact will result in harm to the child
2 or to a parent;

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

8 (7) the interaction and relationship of the child with ~~any other person~~ his
9 or her grandparents, siblings, persons cohabiting with a parent of the child, any
10 other residents of the household, or persons who may significantly affect the
11 best interests of the child;

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

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

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

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

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

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

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

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

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

15 (e) The jurisdiction granted by this section shall be limited by the Uniform
16 Child Custody Jurisdiction and Enforcement Act, if another state has
17 jurisdiction as provided in that act. For the purposes of interpreting that act
18 and any other provision of law ~~which~~ that refers to a custodial parent,
19 including 13 V.S.A. § 2451, the parent with physical responsibility shall be
20 considered the custodial parent.

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

11 (1) The court may enter an order awarding sole parental rights and
12 responsibilities to a parent and denying all parent-child contact with the other
13 parent if the court finds by clear and convincing evidence that the nonmoving
14 parent was convicted of sexually assaulting the moving parent and the child
15 was conceived as a result of the sexual assault, or that the nonmoving parent
16 was convicted of human trafficking pursuant to 13 V.S.A. § 2652, and the
17 moving parent was the trafficked victim. As used in this subdivision, sexual
18 assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d),
19 and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated
20 sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious

1 conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in
2 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, or that the moving parent was
8 trafficked by the nonmoving parent pursuant to 13 V.S.A. § 2652, and the
9 court finds by a preponderance of the evidence that such an order is in the best
10 ~~interest~~ interests of the child. A conviction is not required under this
11 subdivision, and the court may consider other evidence of sexual assault or
12 sexual exploitation in making its determination. For purposes of this
13 subdivision:

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

19 (B) sexual exploitation shall include sexual exploitation of an inmate
20 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 (g) In general, both parents shall have access to information and
11 documentation concerning the child, including medical records, educational
12 records, and law enforcement records. The court may limit access granted by
13 this subsection in the parental rights and responsibilities order.

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

1 ordered pursuant to this subsection shall be paid by the parties or as directed by
2 the court.

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

4 § 665b. CONDITIONS OF PARENTAL RIGHTS AND
5 RESPONSIBILITIES ORDER

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

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

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

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

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

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

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

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

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

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

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

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

20 (e) If the parents have more than one minor child and the court awards each
21 parent physical responsibility of one or more children, either parent may

1 request the court to include a provision in the rights and responsibilities order
2 directing the parents to allow visitation between the children. In deciding on a
3 request under this subsection, the court shall consider whether the request is
4 reasonable and in the best interests of the children.

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

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

11 § 668. MODIFICATION OF ORDER

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

18 (b) Whenever a judgment for physical responsibility is modified, the court
19 shall order a child support modification hearing to be set and notice to be given
20 to the parties. Unless good cause is shown to the contrary, the court shall
21 simultaneously issue a temporary order pending the modification hearing, if

1 adjustments to those portions of any existing child support order or wage
2 withholding order that pertain to any child affected by the modification are
3 necessary to ~~assure~~ ensure that support and wages are paid in amounts
4 proportional to the modified allocation of responsibility between the parties.

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

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

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on July 1, 2021.