

1 H.603

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

12 Referred to Committee on

13 Date:

14 Subject: Family law; annulment; termination of parental rights

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

1 parent.

2 An act relating to human trafficking

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

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

5 § 516. FORCE OR FRAUD

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

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

18 § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS

19 OF

1 THE CHILD

2 (a) In an action under this chapter, the court shall make an order
3 concerning parental rights and responsibilities of any minor child of the
4 parties. The court may order parental rights and responsibilities to be divided
5 or shared between the parents on such terms and conditions as serve the best
6 interests of the child. When the parents cannot agree to divide or share
7 parental rights and responsibilities, the court shall award parental rights and
8 responsibilities primarily or solely to one 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 that the child
15 receives adequate food, clothing, medical care, other material needs, and a safe
16 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;

21 (5) the ability and disposition of each parent to foster a positive

1 relationship and frequent and continuing contact with the other parent,
2 including physical contact, except where contact will result in harm to the
3 child or to a parent;

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

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

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

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

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

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

20 (e) The jurisdiction granted by this section shall be limited by the Uniform
21 Child Custody Jurisdiction and Enforcement Act, if another state has

1 jurisdiction as provided in that act. For the purposes of interpreting that act
2 and any other provision of law which refers to a custodial parent, including
3 13 V.S.A. § 2451, the parent with physical responsibility shall be considered
4 the custodial parent.

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

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

1 assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d),
2 and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated
3 sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious
4 conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in
5 other jurisdictions.

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

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

1 (B) sexual exploitation shall include sexual exploitation of an inmate
2 as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in
3 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A.
4 § 1379, and similar offenses in other jurisdictions.

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

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

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

13 § 3-504. GROUNDS FOR TERMINATING RELATIONSHIP OF PARENT
14 AND CHILD

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

21 (1) In the case of a minor under ~~the age of six months~~ of age at the time

1 the petition is filed, the respondent did not exercise parental responsibility
2 once he or she knew or should have known of the minor's birth or expected
3 birth. In making a determination under this subdivision, the court shall
4 consider all relevant factors, which may include the respondent's failure to:

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

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

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

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

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

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

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

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

21 (C) during any time the minor was not in the physical custody of the

1 other parent, to manifest an ability and willingness to assume legal and
2 physical custody of the minor.

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

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

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

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

21 (2) The respondent, after being afforded a reasonable opportunity to do

1 so, would not have the ability and disposition to:

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

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

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

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

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

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

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

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

20 (3) the interaction and interrelationship of the child with his or her
21 parents, siblings, and any other person who may significantly affect the child's

1 best interests of the child; and

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

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

10 Sec. 4. EFFECTIVE DATE

11 This act shall take effect on passage.