

1 H.224

2 Introduced by Representatives Garofano of Essex, Berbeco of Winooski,
3 Black of Essex, Dolan of Essex Junction, Goldman of
4 Rockingham, Hyman of South Burlington, McGill of Bridport,
5 Pajala of Londonderry, Small of Winooski, and Whitman of
6 Bennington

7 Referred to Committee on

8 Date:

9 Subject: Judiciary; child custody; child input

10 Statement of purpose of bill as introduced: This bill proposes to create a basis
11 for children to have input in child custody cases. The bill permits the court to
12 assess a child's wishes concerning parental rights and responsibilities. The bill
13 also creates procedures and protections for children who desire to address the
14 court.

15 An act relating to child input in child custody cases

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

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

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

20 * * *

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

3 (1) the relationship of the child with each parent and the ability and
4 disposition of each parent to provide the child with love, affection, and
5 guidance;

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

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

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

13 (5) the ability and disposition of each parent to foster a positive
14 relationship and frequent and continuing contact with the other parent,
15 including physical contact, except where contact will result, or has resulted, in
16 harm to the child or to a parent;

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

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

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

4 (9) evidence of abuse, as defined in section 1101 of this title, and the
5 impact of the abuse on the child and on the relationship between the child and
6 the abusing parent; and

7 (10) the wishes of the child concerning parental rights and
8 responsibilities if the child is of sufficient age, development, and capacity to
9 form an intelligent preference.

10 * * *

11 (g) To assess the wishes of the child pursuant to subdivision (b)(10) of this
12 section, in addition to the requirements of Rule 611(a) of the Vermont Rules of
13 Evidence, the court shall control the examination of a child witness to protect
14 the best interests of the child.

15 (1) If the child is at least 14 years of age and requests to address the
16 court concerning parental rights and responsibilities, the court shall permit the
17 child to do so unless the court determines that addressing the court is not in the
18 child's best interests, in which case the court shall state its reasons on the
19 record.

20 (2) If the child is under 14 years of age and requests to address the court
21 concerning parental rights and responsibilities, the court may permit the child

1 to do so, provided the court determines that addressing the court is in the
2 child's best interests.

3 (3) If the court precludes the child from being called as a witness, the
4 court shall provide alternative means of obtaining input from the child and
5 other information concerning the child's preferences.

6 (4)(A) Except as provided in subdivision (B) of this subdivision, the
7 court shall not permit a child addressing the court concerning parental rights
8 and responsibilities to do so in the presence of the parties. The court shall
9 provide an alternative to having the child address the court in the presence of
10 the parties to obtain input directly from the child.

11 (B) Notwithstanding subdivision (A) of this subdivision, the court
12 may permit the child to address the court regarding parental rights and
13 responsibilities in the presence of the parties if the court determines that it is in
14 the best interests of the child and states its reasons on the record. In
15 determining the child's best interests pursuant to this subdivision (B), the court
16 shall consider whether addressing the court regarding custody or visitation in
17 the presence of the parties is reasonably likely to be detrimental to the child.

18 (5) To assist the court in determining whether the child wishes to
19 express a preference or to provide other input concerning parental rights and
20 responsibilities, the child's attorney or guardian ad litem, an evaluator, an
21 investigator, a counselor, or other qualified professional shall communicate to

1 the court that the child wishes to testify, or the court may inquire accordingly.

2 A party or a party's attorney may also indicate to the court that the child
3 wishes to testify or otherwise provide input.

4 (6) If the child informs the child's attorney or guardian ad litem, the
5 evaluator, the investigator, the counselor, or other qualified professional at any
6 point that the child no longer intends to testify, the child's attorney or guardian
7 ad litem, the evaluator, the investigator, the counselor, or other qualified
8 professional shall, as soon as practicable, communicate to the court, the parties
9 or the parties' attorneys, and other professionals serving on the case that the
10 child has changed the child's intention.

11 (7) This subsection does not require the child to express to the court a
12 preference or to provide other input unrelated to parental rights and
13 responsibilities.

14 (8) The Supreme Court shall adopt rules to implement this subsection.

15 Sec. 2. 15 V.S.A. § 669 is amended to read:

16 § 669. GUARDIAN AD LITEM

17 In all cases involving parental rights and responsibilities, the court may
18 appoint a guardian ad litem to represent the best interests of the child. A
19 guardian ad litem shall be appointed if the court inquires into the wishes of the
20 child concerning parental rights and responsibilities pursuant to subdivision
21 665(b)(10) of this title.

1 Sec. 3. EFFECTIVE DATES

2 (a) This section and, in Sec. 1, 15 V.S.A. § 665(g)(8) (rulemaking
3 authority) shall take effect on passage.

4 (b) The remainder of this act shall take effect on July 1, 2024.