

HB 547-FN - AS INTRODUCED

2023 SESSION

23-0662

06/05

HOUSE BILL ***547-FN***

AN ACT relative to rebuttable presumptions of sole custody determinations.

SPONSORS: Rep. Testerman, Merr. 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill defines family and domestic violence a rebuttable presumption when considering sole custody determinations.

This bill also changes the way guardians ad litem are selected.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to rebuttable presumptions of sole custody determinations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Purpose. Amend the introductory paragraph of RSA 461-A:2, I to read as
2 follows:

3 I. Because children do best when both parents have a stable and meaningful involvement in
4 their lives, ***except when there is evidence of family violence under RSA 173-B or RSA 169-C***, it
5 is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a
6 child, to:

7 2 Procedure and Jurisdiction. Amend RSA 461-A:3, II to read as follows:

8 II. In cases where husband and wife or unwed parents are living apart, the court, upon
9 petition of either party, ~~may~~ ***shall*** make such order as to parental rights and responsibilities and
10 support of the children as justice may require. All applicable provisions of this chapter and of RSA
11 458-A, 458-B, 458-C, and 458-D shall apply to such proceedings.

12 3 Parenting Plans; Contents RSA 461-A:4, III is repealed and reenacted to read as follows:

13 III. If the court believes that exposure to domestic violence or child abuse is a problem for
14 the parent found to have abused a child, it can condition future contact upon adequate proof the
15 parent has sought the appropriate counseling with a therapist who has a doctoral degree and the
16 counselor is satisfied that the parent has adequately addressed his or her propensity to abuse as
17 defined under RSA 173-B, RSA 169-C:3, and RSA 633. If the protective parent wishes to cross
18 examine a therapist in any such petition to change court order following therapy, it shall be the
19 responsibility of the abusive parent to pay any witness fees to the therapist for appearing in court.

20 4 Parenting Plans; Contents. Amend RSA 461-A:4, V and VI to read as follows:

21 V. If, ***after a full custodial hearing***, the court orders supervised visitation, it ~~may~~ ***shall***
22 order that such visitation shall take place only at a visitation center that uses a metal detection
23 device and has trained security personnel on-site.

24 VI. Each parenting plan shall include a detailed parenting schedule for the child, specifying
25 the periods when each parent has residential responsibility or non-residential parenting time. ***In***
26 ***the absence of a finding of family violence creating rebuttable presumption for sole***
27 ***parenting decisions***, neither parent shall be described as having the child "reside primarily" with
28 him or her or as having "primary residential responsibility" or "custody" or be designated as the
29 "primary residential parent."

30 5 Decision-making Responsibility. Amend RSA 461-A:5 to read as follows:

31 461-A:5 Decision-making Responsibility.

I. Where the court finds that abuse as defined in RSA 173-B:1 or RSA 169-C:3, I has occurred, the court shall consider such abuse as harmful to children and as evidence in determining whether joint decision-making responsibility is appropriate. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the children or the abused spouse or both. If joint decision-making responsibility is granted despite evidence of abuse, the court shall provide both parents with written findings to support the order. ~~[Except as provided in paragraph III,]~~ *For all other cases,* in the making of any order relative to decision-making responsibility, there shall be a presumption, affecting the burden of proof, that joint decision-making responsibility is in the best interest of minor children:

~~[I.]~~ *II.* Where the parents have agreed to an award of joint decision-making responsibility or so agree in open court at a hearing for the purpose of determining parental rights and responsibilities for the minor children of the marriage. If the court declines to enter an order awarding joint decision-making responsibility, the court shall state in its decision the reasons for the denial.

~~[II.]~~ *III.* Upon the application of either parent for joint decision-making responsibility, in which case it may be awarded at the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint decision-making responsibility is appropriate under this section, the court may appoint a guardian ad litem to represent the interests of the children according to the provisions of RSA 461-A:16. If the court declines to enter an order awarding joint decision-making responsibility, the court shall state in its decision the reasons for the denial.

~~[III. Where the court finds that abuse as defined in RSA 173-B:1, I has occurred, the court shall consider such abuse as harmful to children and as evidence in determining whether joint decision-making responsibility is appropriate. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the children or the abused spouse or both. If joint decision-making responsibility is granted despite evidence of abuse, the court shall provide written findings to support the order.]~~

6 Determination of Parental Rights and Responsibilities; Best Interest. Amend RSA 461-A:6 to read as follows:

I. In determining parental rights and responsibilities, the court shall presume that the presence of child abuse as defined in RSA 169-C or domestic violence under RSA 173-B creates a rebuttable presumption that the abuse or domestic violence is harmful to the child, and that the protective parent should have sole decision making authority, and visitation with the other parent shall be supervised at his or her own expense. Only after a full and final custodial hearing may the court order supervised visitation. If there are 2 instances of continued abuse in or around the exchange of the supervised visitation of the

child, either as defined in RSA 173-B or RSA 169-C, the court shall suspend visitation altogether until the abusive parent provides adequate documentation that they have addressed their behavior in therapy and are ready to prove to the court in supervised visitation that their behavior has changed. Otherwise, in determining parental rights and responsibilities, the court shall be guided by the best interests of the child, and shall consider the following factors:

(a) The relationship of the child with each parent and the ability of each parent to provide the child with nurture, love, affection, and guidance.

(b) The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.

(c) The child's developmental needs and the ability of each parent to meet them, both in the present and in the future.

(d) The quality of the child's adjustment to the child's school and community and the potential effect of any change.

(e) ***Except when the presence of domestic violence or child abuse creates a rebuttable presumption of sole decision making,*** the ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent.

(f) The support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact, ~~[including whether contact is likely to result in harm to the child or to a parent]~~ ***except when child abuse or domestic violence creates a rebuttable presumption of sole decision making.***

(g) The support of each parent for the child's relationship with the other parent, including whether contact is likely to result in harm to the child or to a parent.

(h) The relationship of the child with any other person who may significantly affect the child.

~~(i) [The ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent.]~~

~~(j) Any evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.~~

~~(k)~~ If a parent is incarcerated, the reason for and the length of the incarceration, and any unique issues that arise as a result of incarceration.

~~(4)~~ ***(j)*** The policy of the state regarding the determination of parental rights and responsibilities described in RSA 461-A:2.

~~(m)~~ ***(k)*** Any other additional factors the court deems relevant.

~~I a. If the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child, the court shall make findings supporting its order.]~~

II. If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the determination of parental rights and responsibilities. ~~[Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.]~~

III. In determining parental rights and responsibilities under this section, including residential responsibility, the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.

7 Mediation of Cases Involving Children RSA 461-A:7 is repealed and reenacted to read as follows:

461-A:7 Mediation of Cases Involving Children. The court shall make a list of all certified marital mediators in the state and make that list available to parents in the clerk's office. The court shall further inform the parents of their right to mediate, but shall not influence the parental choice of a mediator. The court shall not order mediation.

8 Temporary Orders. Amend the introductory paragraph of RSA 461-A:8 to read as follows: After the filing of a petition concerning a minor child under this chapter, the court ***within 30 days, shall hold a temporary hearing.*** ~~[may issue orders with such conditions and limitations as the court deems just.]~~ ***The court shall, within 45 days of the filing of a petition, issue temporary orders on support and temporary parenting plans using as many of the factors under RSA 461-A:6 as the court can determine. The court shall prioritize the safety of the child or children in writing temporary orders.*** The orders may be issued ex parte. The orders may include the following:

9 Restraining Orders. Amend the introductory paragraph of RSA 461-A:10, I to read as follows:

I. After the filing of a petition concerning a minor child under this chapter, the court ~~[may]~~ ***shall*** issue restraining orders with such conditions and limitations as the court deems just. At the discretion of the court, such orders may be made on a temporary or permanent basis. Temporary orders may be issued ex parte as provided in RSA 461-A:9. The orders may include the following:

10 Restraining Orders New Subparagraph; Restraining Orders. Amend RSA 461-A:8, I by inserting after subparagraph (d) the following new subparagraph:

(e) Any restraining order issued by the court shall not have exceptions for co-parenting contract.

11 Restraining Orders. Amend the introductory paragraph of RSA 461-A:10, I to read as follows:

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1 I. After the filing of a petition concerning a minor child under this chapter, the court ~~[may]~~
2 **shall** issue restraining orders with such conditions and limitations as the court deems just. At the
3 discretion of the court, such orders may be made on a temporary or permanent basis. Temporary
4 orders may be issued ex parte as provided in RSA 461-A:9. The orders may include the following:

5 12 New Subparagraph; Restraining Orders. Amend RSA 461-A:10, I by inserting after
6 subparagraph (d) the following new subparagraph:

7 (e) Any restraining order issued by the court shall not have exceptions for co-parenting
8 contact.

9 13 Relocation of the Residence of a Child. Amend RSA 461-A:12, I to read as follows:

10 I. This section shall apply any time after the filing of a parenting petition or a divorce
11 petition. This section shall not apply if the relocation results in the residence being closer to the
12 other parent or to any location within the child's current school district. ***This section shall not***
13 ***apply when the factors of child abuse or domestic violence creates a rebuttable***
14 ***presumption of sole parental decision making.***

15 14 Support. Amend RSA 461-A:14, XVIII to read as follows:

16 XVIII. Any motion for contempt of a court order regarding nonpayment of child support, if
17 filed by a parent, shall be reviewed by the court within 30 days. When the arrearage equals or
18 exceeds the equivalent of 8 weeks of child support under the existing order, the matter of the
19 arrearage may be scheduled for mediation through the court within 30 days of the filing of the
20 motion for contempt of court unless a hearing on the motion is scheduled earlier. The mediation
21 shall not consider modification of the child support order. The court shall not order mediation if
22 there is a finding of domestic violence as defined in RSA 173-B:1, ***or a finding of child abuse as***
23 ***defined by RSA 169-C:3***, unless all parties agree to the mediation.

24 15 Guardian Ad Litem. Amend the introductory paragraph of RSA 461-A:16, I to read as
25 follows:

26 I. In contested proceedings under RSA 461-A, the court may appoint a guardian ad litem for
27 a minor child when the court has reason for special concern regarding the welfare of the child. ***The***
28 ***court shall appoint a guardian ad litem from a list of qualified guardian ad litem in the***
29 ***order presented on the list. The court shall not deviate from the order presented on the list***
30 ***unless the next guardian ad litem on the list is unable or unwilling to accept the***
31 ***appointment.*** The role of the guardian ad litem shall be to gather information to assist the court in
32 determining the best interests of the child. In determining whether to appoint a guardian ad litem,
33 the court shall consider:

34 16 Guardian Ad Litem RSA 461-A:16, II is repealed and reenacted to read as follows:

35 II. In no case shall a guardian ad litem file an objection to a witness selected by a parent in
36 a custody matter.

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1 17 Modification of Parental Rights and Responsibilities; Cross Reference Changed. Amend RSA
2 461-A:11, II to read as follows:

3 II. Except as provided in RSA 461-A:11, I(b)-(i) for parenting schedules and RSA 461-A:12
4 for a request to relocate the residence of a child, the court may issue an order modifying any section
5 of a permanent parenting plan based on the best interest of the child. [~~RSA 461-A:5, III~~] ***RSA 461-***
6 ***A:5, I*** shall apply to any request to modify decision-making responsibility.

7 18 Effective Date. This act shall take effect 60 days after its passage.

HB 547-FN- FISCAL NOTE
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AN ACT relative to rebuttable presumptions of sole custody determinations.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Judicial Branch Mediation and Arbitration Fund			

METHODOLOGY:

This bill defines family and domestic violence a rebuttable presumption when considering sole custody determinations. The bill also changes the way guardians ad litem are selected.

The Judicial Branch indicates the fiscal impact on the Branch is indeterminable. Regarding the changes to mediation the Judicial Branch assumes, by removing authority to order mediation, fewer mediations will occur. The Branch reports that, on average, the Mediation and Arbitration Fund pays approximately \$68,600 annually in mediation fees for indigent parties. The Judicial Branch assumes this amount would no longer be available with the change described in the bill. Because there will likely be fewer mediations, the Branch assumes fewer cases will be settled by the parties and more cases will result in contested hearings or trials which will have an increased cost to the Judicial Branch. The requirement that a hearing be scheduled for all initial temporary orders would significantly increase the number of hearings held and limit the time for the parties to reach agreement without court intervention. This will result in more contested proceedings and compress the time by which hearings must be held. The Judicial Branch is unable to determine how many additional hearings would be held or the impact the compressed schedule would have on other court resources or the scheduling of hearings.

The Department of Health and Human Services, Bureau of Child Support Services does not anticipate any programmatic costs associated with this bill where it does not have an impact on program operations.

AGENCIES CONTACTED:

Judicial Branch and Department of Health and Human Services