

## APPENDIX

### PROPOSED STATUTE ESTABLISHING NEW RSA CHAPTER DEALING WITH ALL CHILD RELATED ISSUES NOW COVERED IN RSA 458 AND NEW SECTIONS SUPPORTING TASK FORCE RECOMMENDATIONS

#### A. RSA KIDS:1 - Definitions

In this chapter:

1. “Decision-making responsibility” means the responsibility to make decisions for the child; may refer to decisions on all issues or on specified issues.
2. “Mediation” means a process in which a neutral third party facilitates settlement discussions between parties.
3. “Mediator” means a marital mediator, certified pursuant to RSA 328-C, who has contracted with the court to participate in court-referred mediation under this section.
4. “Parental rights and responsibilities” means all rights and responsibilities parents have concerning their child.
6. “Parenting Plan” means a written plan describing each parent’s rights and responsibilities.
5. “Residential responsibility” means a parent’s responsibility to provide a home for the child.
6. “Residential schedule” means the schedule of when the child is in the home of each parent.

#### B. RSA KID:2 - Allocation of Parental Rights & Responsibilities

1. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

- (a) Support frequent and continuing contact between each child and both parents;
- (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced;

- (c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals if necessary, unless there is evidence of domestic violence, child abuse or neglect;
- (d) Grant parents and courts the widest discretion in developing a parenting plan; and;
- (e) Consider both the best interests of the child in light of the factors listed in section 10 below and the safety of the parties in developing a parenting plan.

2. In a divorce, legal separation, annulment, paternity, or other case between parents concerning their child, the court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The court may order parental rights and responsibilities to be allocated between the parents on such terms and conditions as serve the best interests of the child.

3. An order on parenting rights and responsibilities shall be in the form of a parenting plan including decision-making responsibility, parenting schedule, and residential responsibility.

4. In order to implement an order allocating parental responsibilities in matters where rights and responsibilities are not in dispute, both parents shall submit an agreed upon parenting plan for the court's approval. The court shall accept such plan unless the court find in writing why the plan would not be in the best interests of the child.

5. In matters where parental rights and responsibilities are in dispute, each parent shall submit a parenting plan for the court's approval.

6. If no parenting plan is submitted or if the court does not approve a submitted parenting plan, the court may order mediation to assist the parties in formulating or modifying a parenting plan.

7. If the parents do not agree after mediation, or if there has been evidence of domestic violence between the parties, child abuse or neglect, the court shall formulate a parenting plan by taking into consideration individual plans submitted by the parents, considering the factors in Paragraph 10.

8. Except as provided in subparagraph (b), there shall be a presumption, affecting the burden of proof, that joint decision-making responsibility as to health care, education, and religious training is in the best interest of minor children.

- (a) If the court declines to enter an order awarding joint decision-making responsibility, the court shall state the reasons for denial of an award of joint decision-making responsibility.
- (b) Where the court finds that abuse as defined in RSA 173-B:1 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 that best protect the children or the abused spouse or both. If joint decision-making responsibility is granted despite a finding of abuse, the court shall provide written findings to support the joint decision-making responsibility order.
- (c) If there has been a finding of abuse as defined in RSA 169-C:13, the court shall consider it as evidence in whether joint decision-making is appropriate.
- (d) The court may order a parent who is awarded decision-making responsibility for a certain matter involving a child's welfare to inform the other parent when a major change in that matter occurs.

9. Whether or not there is joint decision-making responsibility, there shall be a presumption that it is in the best interest of the child for both parents to have equal access to all educational, medical, and other records. If the court declines to order such equal access to records, the court shall state in its decision the reason for denying such order.

10. In making an order for parental rights and responsibility, 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 present school, and community and the potential effect of any change.
- (e) The ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including written physical, and electronic contact, except where contact will 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.
- (g) The support of each parent for the child's relationship with the other parent by respecting the parenting schedule of the other 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.
- (j) Any evidence of abuse, as defined in RSA 173-B:1 or RSA 169-C:3, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.
- (k) The court may consider any preference shown by the child. Considerable weight may be given to the stated preference of a mature minor, provided that preference was not unduly influenced.
- (l) If a parent is incarcerated, the court shall consider the reason for and length of the incarceration and, any unique issues that arise as a result of incarceration.
- (m) Any other additional factors the Courts deems relevant.

11. The paramount and controlling consideration in allocating parental rights and responsibilities is the overall welfare of the child, and there is no one formula for all cases, each case being determined by its particular facts.

12. 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.

13 The court may appoint a Guardian ad Litem to represent the interests of the child according to RSA 463:4.

14. The procedure in cases concerning parental rights and responsibilities, including child support, shall be as set out in RSA \_\_\_\_\_.

15. The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a "custodial parent," including but not limited to RSA 458-A, any parent with 50 percent or more of the responsibility shall be considered a "custodial parent."

**C. RSA KID:3 - Parenting plans; contents.**

1. In any proceeding to establish or modify a judgment providing for parenting time with a child, except for matters filed under RSA 173-B, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to develop a parenting plan, the court may develop it. In developing a parenting plan under this subsection, the court may consider only the best interests of the child and the safety of the parties.
2. A parenting plan may include, but need not be limited to, provisions relating to:
  - (a) Decision-making rights and responsibility;
  - (b) Information sharing and access, including telephone and electronic access;
  - (c) Residential schedule, including;
    - (1) Holiday, birthday and vacation planning;
    - (2) Weekends, including holidays, and school in-service days preceding or following weekends;
  - (d) Transportation and exchange of the child;
  - (e) Relocation of parents;
  - (f) Procedure for review and adjustment of the plan; and
  - (g) Methods for resolving disputes.

**D. RSA KIDS:4 Mediation of Cases Involving Children.**

(This section is the current RSA 458:15-a with a change deleting the requirement that both parties agree to mediation.)

1. The general purpose of this section is to:
  - (a) Manage conflict and decrease acrimony between parties in a dispute concerning parental rights and responsibilities for minor children.
  - (b) To promote the best interest of children.
  - (c) Improve the parties' satisfaction with the outcome of disputes concerning parental rights and responsibilities.
  - (d) Increase the parties' participation in making decisions for themselves and their children.
  - (e) Increase compliance with court orders.
  - (f) Reduce the number and frequency of cases returning to court.

(g) Improve court efficiency.

2. The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their positions.

Any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

3. In all cases filed on or after July 1, 2003, involving disputed parental rights and responsibilities (formerly legal or physical custody of children or physical custodial rights), or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation. If the parties are ordered to participate in mediation under this section, all issues relevant to their case, including but not limited to property settlement, alimony, and child support, shall also be mediated unless the court orders otherwise.

4. The court may choose not to order mediation if there is:

(a) A showing of undue hardship to a party.

(b) An agreement between the parties for alternate dispute resolution procedures.

(c) An allegation of abuse or neglect of the minor child.

(d) A finding of alcoholism, drug abuse, or domestic abuse as defined in RSA 173-B:1, unless all parties agree to mediation.

(e) An allegation of serious psychological or emotional abuse.

(f) Lack of an available, suitable mediator within a reasonable time period.

5. Either party may move to have the mediator replaced for good cause.

6. Mediation proceedings shall be held in private, and all communications, oral or written, made during the proceedings, which relate to the issues being mediated, whether made by the mediator, or a party, or any other person present, shall be privileged and confidential and shall not be disclosed and shall not be admissible in court, except as provided in RSA 328-C:9.

7. Any mediated agreement reached by the parties on all or some of the disputed issues shall be reduced to writing, signed by each party, and filed with the court as soon as practicable.

8. The parties shall participate at mediation in good faith. If the mediator determines that mediation is not helpful in resolving the dispute, the mediator shall report that fact to the court and return the matter to the court for adjudication of the underlying issues.

9. In the event both parties are indigent, the mediator shall be paid a set fee for his or her services. The amount of the fee shall be set annually by Supreme Court rule. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the special fund established pursuant to RSA 458:17-b and repaid by the parties in accordance with RSA 458:17-e.

10. The Supreme Court shall establish rules and take such action as necessary to effectuate the purpose of this section.