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Memorandum

September 2005

To: Those for Whom "Parenting Plans" May Apply

Fm: Graham P. Chynoweth

Subj: NH Parental Rights and Responsibilities Act (PRRA) of 2005

The New Hampshire legislature has created a new statute regarding "parental rights and responsibilities."

The statute was effective October 1, 2005 and applies to all open cases, even those filed before October 1, 2005. If there is already a final order in your matter then only if the final order is changed does the new statute apply.

PRRA definitions, statement of purpose, parenting plan contents, and select other provisions are included in the attached PRRA excerpt.

If minor children are involved, the PRRA expects that every court order issued after October 1, 2005 will be in the form of a "parenting plan."

Please call us if you have any questions about how PRRA may apply to your situation.

Excerpts¹ from the NH Parental Rights and Responsibilities Act of 2005

Prepared by Attorney Graham P. Chynoweth, Concord NH

September 2005

461-A:1 Definitions. In this chapter:

I. “Decision-making responsibility” means the responsibility to make decisions for the child. It may refer to decisions on all issues or on specified issues.

IV. “Parental rights and responsibilities” means all rights and responsibilities parents have concerning their child.

V. “Parenting plan” means a written plan describing each parent’s rights and responsibilities.

VI. “Parenting schedule” means the schedule of when the child is in the care of each parent.

VII. “Residential responsibility” means a parent’s responsibility to provide a home for the child.

461-A:2 Statement of Purpose.

I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state...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, unless there is evidence of domestic violence, child abuse, or neglect.

(d) Grant parents and courts the widest discretion in developing a parenting plan.

(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

¹ Numbering/lettering of paragraphs in Statute are sequential. In this Excerpt if a paragraph/letter number does not follow in proper sequence from the number or letter above then the above missing paragraph(s) have been omitted by Chynoweth Legal Services. Beginning and ending paragraphs in some sections have been omitted without note. If ellipsis (i.e. “...”) has been inserted then an internal part of a paragraph has been omitted.

Underling of Section titles has been added for convenience in identifying topics covered.

Full Text of the statute is available from Chynoweth Legal Services, 188 North Mains Street, Concord NH 03224 - call toll free to 1 888 Chynoweth. The full text is 20 pages.

461-A:4 Parenting Plans; Contents.

I. In any proceeding to establish or modify a judgment providing for parenting time with a child... 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...

II. A parenting plan may include provisions relative to:

- (a) Decision-making responsibility and residential responsibility.
- (b) Information sharing and access, including telephone and electronic access.
- (c) Legal residence of a child for school attendance.
- (d) Parenting schedule, including:
 - (1) Holiday, birthday, and vacation planning.
 - (2) Weekends, including holidays, and school in-service days preceding or following weekends.
- (e) Transportation and exchange of the child.
- (f) Relocation of parents.
- (g) Procedure for review and adjustment of the plan.
- (h) Methods for resolving disputes.

461-A:5 Decision-making Responsibility. ...in the making of any order relative to decision-making responsibility, there shall be a presumption...that joint decision-making responsibility is in the best interest of minor children: I. Where the parents have agreed to an award of joint decision-making responsibility... 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. ...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...

461-A:6 Determination of Parental Rights and Responsibilities; Best Interest.

I. 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) 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, 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.
- (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, 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.
- (l) Any other additional factors the court deems relevant.

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.

V. If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

VI. The court may appoint a guardian ad litem to represent the interests of the child....

461-A:7 Mediation of Cases Involving Children.

I. 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) 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.

II. The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator shall attempt 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.

III. In all cases involving disputed parental rights and responsibilities or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation.

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

VII. 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.

VIII. 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.

IX. The parties shall participate at mediation in good faith ...

461-A:12 Relocation of a Residence of a Child.

II. This section shall apply to the relocation of any residence in which the child resides at least 150 days a year.

III. Prior to relocating, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present.

IV. At the request of either parent, the court shall hold a hearing on the relocation issue.

V. The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:

- (a) The relocation is for a legitimate purpose; and
- (b) The proposed location is reasonable in light of that purpose.

VI. If the burden of proof established in paragraph V is met, the burden shifts to the other parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child.

VII. If the court has issued a temporary order authorizing temporary relocation, the court shall not give undue weight to that temporary relocation as a factor in reaching its final decision.

VIII. The court, in reaching its final decision, shall not consider whether the parent seeking to relocate has declared that he or she will not relocate if relocation of the child is denied.

461-A:14 Support.

I. After the filing of a petition for divorce, annulment, separation, paternity, support, or allocation of parental rights and responsibilities...the court shall make such further decree in relation to the support and education of the children as shall be most conducive to their benefit and may order a reasonable provision for their support and education....

III. All support orders shall provide for the assignment of the wages of the responsible parent...

V. No child support order shall require a parent to contribute to an adult child's college expenses or other educational expenses beyond the completion of high school.

VI. All support payments ordered or administered by the court under this chapter shall be deemed judgments when due and payable. Such judgments shall be given full faith and credit by all jurisdictions of this state.

461-A:16 Guardian ad Litem.

I. In all proceedings for divorce, separation, annulment, paternity, or determination of parental rights and responsibilities, the court may appoint a guardian ad litem to represent the interests of the children of the parties, upon its own motion or motion of any party....

III. Guardians ad litem shall respect communications between themselves and the child and shall disclose such information only in accordance with applicable rules and, as required by the court, in rendering a report with the guardian ad litem's recommendations...

273:21 Effective Date. This act shall take effect October 1, 2005.

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