

PLEASE CHECK STATE CASE LAW AS STANDARDS FOR RELOCATION MAY BE FOUND IN CASE LAW.

N.H. Rev. Stat. Ann.

§ 460:15. Custody of Children.

No person shall take from the custody of such wife any minor child of the marriage residing with her, or remove the child from this state against the consent of the mother.

§ 460:16. Guardianship, etc.

Upon her application, a guardian may be appointed for the child, and the superior court may issue an injunction restraining the father and all other persons from removing the child from this state against the consent of the mother, and may make such further orders and decrees as shall secure to her or to the guardian the custody of the child.

§ 460:20. Custody of Children.

No person shall take from the custody of such husband any minor child of the marriage residing with him, or remove the child from this state against the consent of the father.

§ 460:21. Guardianship, etc.

Upon his application, a guardian may be appointed for the child, and the superior court may issue an injunction restraining the mother and all other persons from removing the child from this state against the consent of the father, and may make such further orders and decrees as shall secure to him or to the guardian the custody of the child.

§ 461-A:4. Parenting Plans; Contents.

- I. 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 section, the court shall consider only the best interests of the child as provided under RSA 461-A:6 and the safety of the parties.
- 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, including the grounds for modification in RSA 461-A:11.
- (h) Methods for resolving disputes.
- III. If the parties are insured and the parenting plan directs the parties to participate in counseling, the court shall give due consideration to selecting a counselor who accepts direct payment from the parties' health insurance carrier.
- IV. If the parents have joint decision-making responsibility under RSA 461-A:5, the parenting plan shall include the legal residence of each parent unless the court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child. If the parenting plan includes a parent's residence, the parent shall be responsible for promptly notifying the court and the other parent of any change in residence. The failure to provide such information may result in a finding of contempt of court.
- V. If the court orders supervised visitation, it may order that such visitation shall take place only at a visitation center that uses a metal detection device and has trained security personnel on-site.
- VI. Each parenting plan shall include a detailed parenting schedule for the child, specifying the periods when each parent has residential responsibility or non-residential parenting time. Neither parent shall be described as having the child "reside primarily" with him or her or as having "primary residential responsibility" or "custody" or be designated as the "primary residential parent."

§ 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, 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.
 - (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.
 - (l) The policy of the state regarding the determination of parental rights and responsibilities described in RSA 461-A:2.

- (m) 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.
 - IV. If the court finds that a parent has been convicted of sexual assault or there has been a finding by a court of competent jurisdiction of sexual abuse against such parent's minor child or minor stepchild, the court may prohibit contact between such parent and the victim of the abuse and any sibling or step-sibling of the victim. The court shall make orders that best protect the victim of the abuse and the siblings and step-siblings of such victim.
 - (a) If a parent makes a good faith allegation based on a reasonable belief supported by facts that the parent's child is a victim of physical abuse or neglect or sexual abuse perpetrated by the other parent and if the parent making the allegation acts lawfully and in good faith in accordance with such belief to protect the child or seek treatment for the child, the parent making the allegation shall not be deprived of parenting time, or contact with the child based on reasonable actions taken in accordance with that belief.
 - (b) In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3, XXVII-b, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2, RSA 632-A:3, and RSA 632-A:4.
 - 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 according to RSA 461-A:16.
 - VII. At the request of an aggrieved party, the court shall set forth the reasons for its decision in a written order.

§ 461-A:11. Modification of Parental Rights and Responsibilities.

- I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances:
 - (a) The parties agree to a modification.
 - (b) If the court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, the court may order a change in the parental rights and responsibilities without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child.
 - (c) If the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.
 - (d) If the parties have substantially equal periods of residential responsibility for the child and either each asserts or the court finds that the original allocation of parental rights and responsibilities is not working, the court may order a change in allocation of parental rights and responsibilities based on a finding that the change is in the best interests of the child.

- (e) 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 parent with whom he or she wants to live. 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.
 - (f) The modification makes either a minimal change or no change in the allocation of parenting time between the parents, and the court determines that such change would be in the best interests of the child.
 - (g) If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now living either closer to each other or further from each other by such distance that the existing order is not in the child's best interest.
 - (h) If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work schedule such that the existing order is not in the child's best interest.
 - (i) If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule or both based on a finding that the change is in the best interests of the child, provided that the request is at least 5 years after the prior order.
- II. Except as provided in RSA 461-A:11, I(b)-(i) for parenting schedules and RSA 461-A:12 for a request to relocate the residence of a child, the court may issue an order modifying any section of a permanent parenting plan based on the best interest of the child. RSA 461-A:5, III shall apply to any request to modify decision-making responsibility.
 - III. For the purposes of this section, the burden of proof shall be on the moving party.

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

- I. This section shall apply any time after the filing of a parenting petition or a divorce petition. This section shall not apply if the relocation results in the residence being closer to the other parent or to any location within the child's current school district.
- II. This section shall apply to the relocation of any residence in which the child resides at least 150 days a year.
- II-a. A parent shall not relocate a child without a court order unless relocation is necessary to protect the safety of the parent or child, or both.
- 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, or the parents have a written agreement to the contrary. Factors justifying shorter notice shall include, but are not limited to, relocation to protect the safety of the parent, child, or both, or relocation because the current abode is unavailable due to circumstances beyond the control of the parent.
- IV. At the request of either parent, the court shall hold a hearing on the relocation issue. Either party may request that the court issue ex parte orders as provided in RSA 461-A:9 to prevent or allow relocation of the child. The court shall hold an evidentiary hearing on the relocation request in the following manner:
 - (a) In an open divorce or parenting case, the court shall hold a hearing within 30 days of the request for a hearing on the relocation issue.
 - (b) Following a petition to re-open a closed divorce or parenting case, the court shall hold a hearing within 30 days of service of the petition on the other party.
 - (c) The court may notice the initial hearing on relocation as a final hearing on relocation. If the court determines it needs additional information or time to make a final determination on the relocation of the child, it shall notice the initial hearing as a temporary hearing on the relocation issue. After the

temporary hearing, the court shall issue a temporary order on the relocation request and schedule a final hearing no later than 60 days from the temporary hearing date, unless the parties agree otherwise.

- 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.
- IX.** If the parties agree on or the court authorizes the relocation of a residence of a child, the court may modify the allocation or schedule of parenting time or both based on a finding that the change is in the best interests of the child.