

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 229
100TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Children, April 30, 2019, with recommendation that the Senate Committee Substitute do pass.

0808S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to child custody arrangements.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.375, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 452.375, to read as follows:

452.375. 1. As used in this chapter, unless the context clearly indicates
2 otherwise:

3 (1) "Custody" means joint legal custody, sole legal custody, joint physical
4 custody or sole physical custody or any combination thereof;

5 (2) "Joint legal custody" means that the parents share the
6 decision-making rights, responsibilities, and authority relating to the health,
7 education and welfare of the child, and, unless allocated, apportioned, or decreed,
8 the parents shall confer with one another in the exercise of decision-making
9 rights, responsibilities, and authority;

10 (3) "Joint physical custody" means an order awarding each of the parents
11 significant, but not necessarily equal, periods of time during which a child resides
12 with or is under the care and supervision of each of the parents. Joint physical
13 custody shall be shared by the parents in such a way as to assure the child of
14 frequent, continuing and meaningful contact with both parents;

15 (4) "Third-party custody" means a third party designated as a legal and
16 physical custodian pursuant to subdivision (5) of subsection 5 of this section.

17 2. The court shall determine custody in accordance with the best interests
18 of the child. **There shall be a rebuttable presumption that an award of**
19 **equal or approximately equal parenting time to each parent is in the**

20 **best interests of the child. Such presumption is rebuttable only by a**
21 **preponderance of the evidence in accordance with all relevant factors**
22 **including, but not limited to, the factors contained in subdivisions (1)**
23 **to (8) of this subsection. The presumption may be rebutted if the court**
24 **finds that the parents have reached an agreement on all issues related**
25 **to custody, or if the court finds that a pattern of domestic violence has**
26 **occurred as set out in subdivision (6) of this subsection.** When the parties
27 have not reached an agreement on all issues related to custody, the court shall
28 consider all relevant factors and enter written findings of fact and conclusions of
29 law, including, but not limited to, the following:

30 (1) The wishes of the child's parents as to custody and the proposed
31 parenting plan submitted by both parties;

32 (2) The needs of the child for a frequent, continuing and meaningful
33 relationship with both parents and the ability and willingness of parents to
34 actively perform their functions as mother and father for the needs of the child;

35 (3) The interaction and interrelationship of the child with parents,
36 siblings, and any other person who may significantly affect the child's best
37 interests;

38 (4) Which parent is more likely to allow the child frequent, continuing and
39 meaningful contact with the other parent;

40 (5) The child's adjustment to the child's home, school, and community;

41 (6) The mental and physical health of all individuals involved, including
42 any history of abuse of any individuals involved. If the court finds that a pattern
43 of domestic violence as defined in section 455.010 has occurred, and, if the court
44 also finds that awarding custody to the abusive parent is in the best interest of
45 the child, then the court shall enter written findings of fact and conclusions of
46 law. Custody and visitation rights shall be ordered in a manner that best
47 protects the child and any other child or children for whom the parent has
48 custodial or visitation rights, and the parent or other family or household member
49 who is the victim of domestic violence from any further harm;

50 (7) The intention of either parent to relocate the principal residence of the
51 child; and

52 (8) The wishes of a child as to the child's custodian. The fact that a
53 parent sends his or her child or children to a home school, as defined in section
54 167.031, shall not be the sole factor that a court considers in determining custody
55 of such child or children.

56 3. (1) In any court proceedings relating to custody of a child, the court
57 shall not award custody or unsupervised visitation of a child to a parent if such
58 parent or any person residing with such parent has been found guilty of, or pled
59 guilty to, any of the following offenses when a child was the victim:

60 (a) A felony violation of section 566.030, 566.031, 566.032, 566.060,
61 566.061, 566.062, 566.064, 566.067, 566.068, 566.083, 566.100, 566.101, 566.111,
62 566.151, 566.203, 566.206, 566.209, 566.211, or 566.215;

63 (b) A violation of section 568.020;

64 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

65 (d) A violation of section 568.065;

66 (e) A violation of section 573.200;

67 (f) A violation of section 573.205; or

68 (g) A violation of section 568.175.

69 (2) For all other violations of offenses in chapters 566 and 568 not
70 specifically listed in subdivision (1) of this subsection or for a violation of an
71 offense committed in another state when a child is the victim that would be a
72 violation of chapter 566 or 568 if committed in Missouri, the court may exercise
73 its discretion in awarding custody or visitation of a child to a parent if such
74 parent or any person residing with such parent has been found guilty of, or pled
75 guilty to, any such offense.

76 4. The general assembly finds and declares that it is the public policy of
77 this state that frequent, continuing and meaningful contact with both parents
78 after the parents have separated or dissolved their marriage is in the best
79 interest of the child, except for cases where the court specifically finds that such
80 contact is not in the best interest of the child, and that it is the public policy of
81 this state to encourage parents to participate in decisions affecting the health,
82 education and welfare of their children, and to resolve disputes involving their
83 children amicably through alternative dispute resolution. In order to effectuate
84 these policies, the court shall determine the custody arrangement which will best
85 assure both parents participate in such decisions and have frequent, continuing
86 and meaningful contact with their children so long as it is in the best interests
87 of the child.

88 5. Prior to awarding the appropriate custody arrangement in the best
89 interest of the child, the court shall consider each of the following as follows:

90 (1) Joint physical and joint legal custody to both parents, which shall not
91 be denied solely for the reason that one parent opposes a joint physical and joint

92 legal custody award. The residence of one of the parents shall be designated as
93 the address of the child for mailing and educational purposes;

94 (2) Joint physical custody with one party granted sole legal custody. The
95 residence of one of the parents shall be designated as the address of the child for
96 mailing and educational purposes;

97 (3) Joint legal custody with one party granted sole physical custody;

98 (4) Sole custody to either parent; or

99 (5) Third-party custody or visitation:

100 (a) When the court finds that each parent is unfit, unsuitable, or unable
101 to be a custodian, or the welfare of the child requires, and it is in the best
102 interests of the child, then custody, temporary custody or visitation may be
103 awarded to any other person or persons deemed by the court to be suitable and
104 able to provide an adequate and stable environment for the child. Before the
105 court awards custody, temporary custody or visitation to a third person under this
106 subdivision, the court shall make that person a party to the action;

107 (b) Under the provisions of this subsection, any person may petition the
108 court to intervene as a party in interest at any time as provided by supreme court
109 rule.

110 6. If the parties have not agreed to a custodial arrangement, or the court
111 determines such arrangement is not in the best interest of the child, the court
112 shall include a written finding in the judgment or order based on the public policy
113 in subsection 4 of this section and each of the factors listed in subdivisions (1) to
114 (8) of subsection 2 of this section detailing the specific relevant factors that made
115 a particular arrangement in the best interest of the child. If a proposed custodial
116 arrangement is rejected by the court, the court shall include a written finding in
117 the judgment or order detailing the specific relevant factors resulting in the
118 rejection of such arrangement.

119 7. Upon a finding by the court that either parent has refused to exchange
120 information with the other parent, which shall include but not be limited to
121 information concerning the health, education and welfare of the child, the court
122 shall order the parent to comply immediately and to pay the prevailing party a
123 sum equal to the prevailing party's cost associated with obtaining the requested
124 information, which shall include but not be limited to reasonable attorney's fees
125 and court costs.

126 8. As between the parents of a child, no preference may be given to either
127 parent in the awarding of custody because of that parent's age, sex, or financial

128 status, nor because of the age or sex of the child. The court shall not presume
129 that a parent, solely because of his or her sex, is more qualified than the other
130 parent to act as a joint or sole legal or physical custodian for the child.

131 9. Any judgment providing for custody shall include a specific written
132 parenting plan setting forth the terms of such parenting plan arrangements
133 specified in subsection 8 of section 452.310. Such plan may be a parenting plan
134 submitted by the parties pursuant to section 452.310 or, in the absence thereof,
135 a plan determined by the court, but in all cases, the custody plan approved and
136 ordered by the court shall be in the court's discretion and shall be in the best
137 interest of the child.

138 10. After August 28, 2016, every court order establishing or modifying
139 custody or visitation shall include the following language: "In the event of
140 noncompliance with this order, the aggrieved party may file a verified motion for
141 contempt. If custody, visitation, or third-party custody is denied or interfered
142 with by a parent or third party without good cause, the aggrieved person may file
143 a family access motion with the court stating the specific facts that constitute a
144 violation of the custody provisions of the judgment of dissolution, legal
145 separation, or judgment of paternity. The circuit clerk will provide the aggrieved
146 party with an explanation of the procedures for filing a family access motion and
147 a simple form for use in filing the family access motion. A family access motion
148 does not require the assistance of legal counsel to prepare and file."

149 11. No court shall adopt any local rule, form, or practice requiring a
150 standardized or default parenting plan for interim, temporary, or permanent
151 orders or judgments. Notwithstanding any other provision **of law** to the
152 contrary, a court may enter an interim order in a proceeding under this chapter,
153 provided that the interim order shall not contain any provisions about child
154 custody or a parenting schedule or plan without first providing the parties with
155 notice and a hearing, unless the parties otherwise agree.

156 12. Unless a parent has been denied custody rights pursuant to this
157 section or visitation rights under section 452.400, both parents shall have access
158 to records and information pertaining to a minor child including, but not limited
159 to, medical, dental, and school records. If the parent without custody has been
160 granted restricted or supervised visitation because the court has found that the
161 parent with custody or any child has been the victim of domestic violence, as
162 defined in section 455.010, by the parent without custody, the court may order
163 that the reports and records made available pursuant to this subsection not

164 include the address of the parent with custody or the child. A court shall order
165 that the reports and records made available under this subsection not include the
166 address of the parent with custody if the parent with custody is a participant in
167 the address confidentiality program under section 589.663. Unless a parent has
168 been denied custody rights pursuant to this section or visitation rights under
169 section 452.400, any judgment of dissolution or other applicable court order shall
170 specifically allow both parents access to such records and reports.

171 13. Except as otherwise precluded by state or federal law, if any
172 individual, professional, public or private institution or organization denies access
173 or fails to provide or disclose any and all records and information, including, but
174 not limited to, past and present dental, medical and school records pertaining to
175 a minor child, to either parent upon the written request of such parent, the court
176 shall, upon its finding that the individual, professional, public or private
177 institution or organization denied such request without good cause, order that
178 party to comply immediately with such request and to pay to the prevailing party
179 all costs incurred, including, but not limited to, attorney's fees and court costs
180 associated with obtaining the requested information.

181 14. An award of joint custody does not preclude an award of child support
182 pursuant to section 452.340 and applicable supreme court rules. The court shall
183 consider the factors contained in section 452.340 and applicable supreme court
184 rules in determining an amount reasonable or necessary for the support of the
185 child.

186 15. If the court finds that domestic violence or abuse as defined in section
187 455.010 has occurred, the court shall make specific findings of fact to show that
188 the custody or visitation arrangement ordered by the court best protects the child
189 and the parent or other family or household member who is the victim of domestic
190 violence, as defined in section 455.010, and any other children for whom such
191 parent has custodial or visitation rights from any further harm.

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