

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 459

101ST GENERAL ASSEMBLY

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1913S.02C

ADRIANE D. CROUSE, Secretary

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## AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new  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

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

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

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

12 (3) "Joint physical custody" means an order awarding  
13 each of the parents significant, but not necessarily equal,  
14 periods of time during which a child resides with or is  
15 under the care and supervision of each of the parents.  
16 Joint physical custody shall be shared by the parents in

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 such a way as to assure the child of frequent, continuing  
18 and meaningful contact with both parents;

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

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

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

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

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

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

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

56           (6) The mental and physical health of all individuals  
57 involved, including any history of abuse of any individuals  
58 involved. If the court finds that a pattern of domestic  
59 violence as defined in section 455.010 has occurred, and, if  
60 the court also finds that awarding custody to the abusive  
61 parent is in the best interest of the child, then the court  
62 shall enter written findings of fact and conclusions of  
63 law. Custody and visitation rights shall be ordered in a  
64 manner that best protects the child and any other child or  
65 children for whom the parent has custodial or visitation  
66 rights, and the parent or other family or household member  
67 who is the victim of domestic violence from any further harm;

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

70           (8) The [wishes] **input** of a child as to the child's  
71 **[custodian] custodial arrangement.** [The fact that a parent  
72 sends his or her child or children to a home school, as  
73 defined in section 167.031, shall not be the sole factor  
74 that a court considers in determining custody of such child  
75 or children.]

76           3. (1) In any court proceedings relating to custody  
77 of a child, the court shall not award custody or  
78 unsupervised visitation of a child to a parent if such  
79 parent or any person residing with such parent has been

80 found guilty of, or pled guilty to, any of the following  
81 offenses when a child was the victim:

82 (a) A felony violation of section 566.030, 566.031,  
83 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,  
84 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,  
85 566.203, 566.206, 566.209, 566.211, or 566.215;

86 (b) A violation of section 568.020;

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

89 (d) A violation of section 568.065;

90 (e) A violation of section 573.200;

91 (f) A violation of section 573.205; or

92 (g) A violation of section 568.175.

93 (2) For all other violations of offenses in chapters  
94 566 and 568 not specifically listed in subdivision (1) of  
95 this subsection or for a violation of an offense committed  
96 in another state when a child is the victim that would be a  
97 violation of chapter 566 or 568 if committed in Missouri,  
98 the court may exercise its discretion in awarding custody or  
99 visitation of a child to a parent if such parent or any  
100 person residing with such parent has been found guilty of,  
101 or pled guilty to, any such offense.

102 4. The general assembly finds and declares that it is  
103 the public policy of this state that frequent, continuing  
104 and meaningful contact with both parents after the parents  
105 have separated or dissolved their marriage is in the best  
106 interest of the child, except for cases where the court  
107 specifically finds that such contact is not in the best  
108 interest of the child, and that it is the public policy of  
109 this state to encourage parents to participate in decisions  
110 affecting the health, education and welfare of their  
111 children, and to resolve disputes involving their children

112 amicably through alternative dispute resolution. In order  
113 to effectuate these policies, **the general assembly**  
114 **encourages the court to enter a temporary parenting plan as**  
115 **early as practicable in a proceeding under this chapter,**  
116 **consistent with the provisions of subsection 2 of this**  
117 **section, and, in so doing,** the court shall determine the  
118 custody arrangement which will best assure both parents  
119 participate in such decisions and have frequent, continuing  
120 and meaningful contact with their children so long as it is  
121 in the best interests of the child.

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

125 (1) Joint physical and joint legal custody to both  
126 parents, which shall not be denied solely for the reason  
127 that one parent opposes a joint physical and joint legal  
128 custody award. The residence of one of the parents shall be  
129 designated as the address of the child for mailing and  
130 educational purposes;

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

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

137 (4) Sole custody to either parent; or

138 (5) Third-party custody or visitation:

139 (a) When the court finds that each parent is unfit,  
140 unsuitable, or unable to be a custodian, or the welfare of  
141 the child requires, and it is in the best interests of the  
142 child, then custody, temporary custody or visitation may be  
143 awarded to any other person or persons deemed by the court

144 to be suitable and able to provide an adequate and stable  
145 environment for the child. Before the court awards custody,  
146 temporary custody or visitation to a third person under this  
147 subdivision, the court shall make that person a party to the  
148 action;

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

152 6. If the parties have not agreed to a custodial  
153 arrangement, or the court determines such arrangement is not  
154 in the best interest of the child, the court shall include a  
155 written finding in the judgment or order based on the public  
156 policy in subsection 4 of this section and each of the  
157 factors listed in subdivisions (1) to (8) of subsection 2 of  
158 this section detailing the specific relevant factors that  
159 made a particular arrangement in the best interest of the  
160 child. If a proposed custodial arrangement is rejected by  
161 the court, the court shall include a written finding in the  
162 judgment or order detailing the specific relevant factors  
163 resulting in the rejection of such arrangement.

164 7. Upon a finding by the court that either parent has  
165 refused to exchange information with the other parent, which  
166 shall include but not be limited to information concerning  
167 the health, education and welfare of the child, the court  
168 shall order the parent to comply immediately and to pay the  
169 prevailing party a sum equal to the prevailing party's cost  
170 associated with obtaining the requested information, which  
171 shall include but not be limited to reasonable attorney's  
172 fees and court costs.

173 8. As between the parents of a child, no preference  
174 may be given to either parent in the awarding of custody  
175 because of that parent's age, sex, or financial status, nor

176 because of the age or sex of the child. The court shall not  
177 presume that a parent, solely because of his or her sex, is  
178 more qualified than the other parent to act as a joint or  
179 sole legal or physical custodian for the child.

180 9. Any judgment providing for custody shall include a  
181 specific written parenting plan setting forth the terms of  
182 such parenting plan arrangements specified in subsection 8  
183 of section 452.310. Such plan may be a parenting plan  
184 submitted by the parties pursuant to section 452.310 or, in  
185 the absence thereof, a plan determined by the court, but in  
186 all cases, the custody plan approved and ordered by the  
187 court shall be in the court's discretion and shall be in the  
188 best interest of the child.

189 10. After August 28, 2016, every court order  
190 establishing or modifying custody or visitation shall  
191 include the following language: "In the event of  
192 noncompliance with this order, the aggrieved party may file  
193 a verified motion for contempt. If custody, visitation, or  
194 third-party custody is denied or interfered with by a parent  
195 or third party without good cause, the aggrieved person may  
196 file a family access motion with the court stating the  
197 specific facts that constitute a violation of the custody  
198 provisions of the judgment of dissolution, legal separation,  
199 or judgment of paternity. The circuit clerk will provide  
200 the aggrieved party with an explanation of the procedures  
201 for filing a family access motion and a simple form for use  
202 in filing the family access motion. A family access motion  
203 does not require the assistance of legal counsel to prepare  
204 and file.".

205 11. No court shall adopt any local rule, form, or  
206 practice requiring a standardized or default parenting plan  
207 for interim, temporary, or permanent orders or judgments.

208 Notwithstanding any other provision **of law** to the contrary,  
209 a court may enter an interim order in a proceeding under  
210 this chapter, provided that the interim order shall not  
211 contain any provisions about child custody or a parenting  
212 schedule or plan without first providing the parties with  
213 notice and a hearing, unless the parties otherwise agree.

214 12. Unless a parent has been denied custody rights  
215 pursuant to this section or visitation rights under section  
216 452.400, both parents shall have access to records and  
217 information pertaining to a minor child including, but not  
218 limited to, medical, dental, and school records. If the  
219 parent without custody has been granted restricted or  
220 supervised visitation because the court has found that the  
221 parent with custody or any child has been the victim of  
222 domestic violence, as defined in section 455.010, by the  
223 parent without custody, the court may order that the reports  
224 and records made available pursuant to this subsection not  
225 include the address of the parent with custody or the  
226 child. A court shall order that the reports and records  
227 made available under this subsection not include the address  
228 of the parent with custody if the parent with custody is a  
229 participant in the address confidentiality program under  
230 section 589.663. Unless a parent has been denied custody  
231 rights pursuant to this section or visitation rights under  
232 section 452.400, any judgment of dissolution or other  
233 applicable court order shall specifically allow both parents  
234 access to such records and reports.

235 13. Except as otherwise precluded by state or federal  
236 law, if any individual, professional, public or private  
237 institution or organization denies access or fails to  
238 provide or disclose any and all records and information,  
239 including, but not limited to, past and present dental,



240 medical and school records pertaining to a minor child, to  
241 either parent upon the written request of such parent, the  
242 court shall, upon its finding that the individual,  
243 professional, public or private institution or organization  
244 denied such request without good cause, order that party to  
245 comply immediately with such request and to pay to the  
246 prevailing party all costs incurred, including, but not  
247 limited to, attorney's fees and court costs associated with  
248 obtaining the requested information.

249       14. An award of joint custody does not preclude an  
250 award of child support pursuant to section 452.340 and  
251 applicable supreme court rules. The court shall consider  
252 the factors contained in section 452.340 and applicable  
253 supreme court rules in determining an amount reasonable or  
254 necessary for the support of the child.

255       15. If the court finds that domestic violence or abuse  
256 as defined in section 455.010 has occurred, the court shall  
257 make specific findings of fact to show that the custody or  
258 visitation arrangement ordered by the court best protects  
259 the child and the parent or other family or household member  
260 who is the victim of domestic violence, as defined in  
261 section 455.010, and any other children for whom such parent  
262 has custodial or visitation rights from any further harm.

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