

SECOND REGULAR SESSION

SENATE BILL NO. 839

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

3689S.02I

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Section A. Section 452.375, RSMo, is repealed and one new
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
17 such a way as to assure the child of frequent, continuing
18 and meaningful contact with both parents;

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

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 clear and convincing evidence in accordance with all**
28 **relevant factors, including, but not limited to, the factors**
29 **contained in subdivisions (1) to (8) of this subsection.**
30 **The presumption may be rebutted if the court finds that the**
31 **parents have reached an agreement on all issues related to**
32 **custody, or if the court finds that a pattern of domestic**
33 **violence has occurred as set out in subdivision (6) of this**
34 **subsection.** When the parties have not reached an agreement
35 on all issues related to custody, the court shall consider
36 all relevant factors and enter written findings of fact and
37 conclusions of law, including, but not limited to, the
38 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:

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

(b) A violation of section 568.020;

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

(d) A violation of section 568.065;

(e) A violation of section 573.200;

(f) A violation of section 573.205; or

(g) A violation of section 568.175.

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

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state to encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children amicably through alternative dispute resolution. In order 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 a person related by consanguinity or affinity to
144 the child. If no person related to the child by
145 consanguinity or affinity is willing to accept custody, then

the court may award custody to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, the court shall make that person a party to the action;

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

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

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

8. As between the parents of a child, no preference may be given to either parent in the awarding of custody

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

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

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

11. No court shall adopt any local rule, form, or practice requiring a standardized or default parenting plan

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

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

238 13. Except as otherwise precluded by state or federal
239 law, if any individual, professional, public or private
240 institution or organization denies access or fails to
241 provide or disclose any and all records and information,

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

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

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

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