

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1531

AN ACT

To repeal sections 452.375, 452.410, and 452.423, RSMo, and to enact in lieu thereof four new sections relating to child custody.

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

Section A. Sections 452.375, 452.410, and 452.423, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 452.375, 452.381, 452.410, and 452.423, to read as follows:

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

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

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

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

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

2. The court shall determine custody in accordance with the best interests of the child. There shall be a rebuttable presumption that an award of equal or approximately equal parenting time to each parent is in the best interests of the child. Such presumption is rebuttable only by a preponderance of the evidence in accordance with all relevant factors, including, but not limited to, the factors contained in subdivisions (1) to ~~[(8)]~~ (9) of this subsection. The presumption may be rebutted if the court finds that the parents have reached an agreement on all issues related to custody, or if the court finds that a pattern of domestic violence has occurred as set out in subdivision (6) of this subsection. When the parties have not reached an agreement on all issues related to custody, the court shall consider all relevant factors and enter written findings of fact and conclusions of law, including, but not limited to, the following:

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

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

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

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

(5) The child's adjustment to the child's home, school, and community. The fact that a parent sends his or her child or children to a home school or FPE school shall not be the sole factor that a court considers in determining custody of such child or children;

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

(7) The child's need for stability, continuity of care, and consistent routine, as well as the capacity of each parent to provide a safe, stable, and developmentally appropriate environment;

(8) The intention of either parent to relocate the principal residence of the child; and

~~[(8)]~~ (9) The unobstructed input of a child, free of coercion and manipulation, as to the child's custodial arrangement.

3. (1) In any court proceedings relating to custody of a child, the court shall not award custody or unsupervised 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 of the following 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 encourages the court to enter a temporary parenting plan as

early as practicable in a proceeding under this chapter, consistent with the provisions of subsection 2 of this section, and, in so doing, the court shall determine the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.

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

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

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

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

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child, then custody, temporary custody or visitation may be awarded to a person related by consanguinity or affinity to the child. If no person related to the child by 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)]~~ (9) 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 for interim, temporary, or permanent orders or judgments. Notwithstanding any other provision of law to the contrary, a court may enter an interim order in a proceeding under

this chapter, provided that the interim order shall not contain any provisions about child custody or a parenting schedule or plan without first providing the parties with notice and a hearing, unless the parties otherwise agree.

12. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, both parents shall have access to records and information pertaining to a minor child including, but not limited to, medical, dental, and school records. If the parent without custody has been granted restricted or supervised visitation because the court has found that the parent with custody or any child has been the victim of domestic violence, as defined in section 455.010, by the parent without custody, the court may order that the reports and records made available pursuant to this subsection not include the address of the parent with custody or the child. A court shall order that the reports and records made available under this subsection not include the address of the parent with custody if the parent with custody is a participant in the address confidentiality program under section 589.663. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, any judgment of dissolution or other applicable court order shall specifically allow both parents access to such records and reports.

13. Except as otherwise precluded by state or federal law, if any individual, professional, public or private institution or organization denies access or fails to 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.

452.381. 1. During the pendency of an action seeking a modification of any judgment pertaining to child custody or visitation, upon the motion of any party and with notice to all other parties and after a hearing, the court may make temporary orders relative to the custody and visitation of the child subject to the judgment being modified. Any such order shall remain in effect until the disposition of the motion to modify or until further order of the court.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, an order entered relative to custody or visitation under this section may be entered without notice to opposing parties if the court finds that an emergency exists, the nature of which requires the court

to act before opposing parties can be heard in opposition, including, but not limited to, an emergency in which the child faces immediate or imminent risk of physical harm, emotional harm, psychological injury, or medical neglect because of a parent's deteriorating mental health, a parent's failure to comply with prescribed or therapeutic treatment, reports from licensed medical or mental health professionals indicating a parent's instability, or a pattern of emotional volatility or coercive behavior by a parent. In all such cases, the order shall be for a period not to exceed fifteen days or until further order of the court, and written notice of the issuance of any such order and the reasons for it shall be given to opposing parties, along with notice of the date, time, and place that a hearing on the continuation of the order will be held.

3. No temporary order shall deny parenting time to a parent or any other party granted custody or visitation under the judgment for which modification is sought, unless the court finds that parenting time is likely to cause physical or emotional harm to the child.

4. If temporary parenting time is ordered, the court may also order temporary child support or temporarily modify any existing child support orders if requested by any party.

5. A temporary parenting plan issued under this section shall not prejudice the rights of the parties or the child that are to be adjudicated at subsequent hearings in the proceeding.

6. Dismissal of the motion to modify shall automatically vacate any temporary order issued under this section.

452.410. 1. Except as provided in subsection 2 of this section, the court shall not modify a prior custody decree unless it has jurisdiction under the provisions of

section 452.745 and it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. Notwithstanding any other provision of this section or sections 452.375 and 452.400 to the contrary, any custody order entered by any court in this state or any other state may, subject to jurisdictional requirements, be modified to allow for joint custody or visitation only in accordance with section 452.375, 452.400, 452.402, or 452.403.

2. If either parent files a motion to modify an award of joint legal custody or joint physical custody, each party shall be entitled to a change of judge as provided by supreme court rule.

3. If the parties have agreed to terms for modification of custody or visitation of the child, the parties may submit to the court a proposed parenting plan signed, under oath, by all parties having rights of custody or visitation under the existing custody or visitation judgment. The proposed plan shall be accompanied by a motion, signed under oath by all parties, requesting a modification of the existing parenting plan and no statement of any changes in circumstances shall be required. If the court determines that the proposed plan is in the child's best interests, then the court shall enter an order granting custody or visitation according to the proposed parenting plan as soon as possible following the filing.

4. As used in this section and in cases where one or more children subject to a custody order have special needs or disabilities, a change of circumstances may include one

parent's neglect or harm of the best interests of the child or children with special needs or disabilities.

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem appointed under this subsection in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.

2. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged.

3. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed;

(3) Review relevant medical, educational, and therapeutic records and consult treating professionals when appropriate, assess special medical or developmental needs, and evaluate household stability and continuity of care; and

(4) Request the juvenile officer to cause a petition to be filed in the juvenile division of the circuit court if

the guardian ad litem believes the child alleged to be abused or neglected is in danger.

4. The guardian ad litem shall submit a written report summarizing the investigative steps taken and the factual basis for any recommendations. The court shall review the report to ensure compliance with the provisions of this section and any other duties required under law prior to adopting any of the recommendations contained within.

5. The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

[5.] 6. The guardian ad litem shall be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may:

(1) Issue a direct payment order to the parties. If a party fails to comply with the court's direct payment order, the court may find such party to be in contempt of court; or

(2) Award such fees as a judgment to be paid by any party to the proceedings or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513.

7. A guardian ad litem appointed under this section shall have received training in child development, trauma-informed practices, domestic violence dynamics, coercive control, mental health disorders affecting parenting capacity, and considerations for children with special

needs. Such training may be part of any training or education otherwise required of a guardian ad litem under law.