

SECOND REGULAR SESSION

SENATE BILL NO. 1371

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

5153S.01I

KRISTINA MARTIN, Secretary

AN ACT

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

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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

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

18 the child of frequent, continuing and meaningful contact
19 with both parents;

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

23 2. The court shall determine custody in accordance
24 with the best interests of the child. There shall be a
25 rebuttable presumption that an award of equal or
26 [approximately] **substantially** equal parenting time to each
27 parent is in the best interests of the child. Such
28 presumption is rebuttable only by a preponderance of the
29 evidence in accordance with all relevant factors, including,
30 but not limited to, the factors contained in subdivisions
31 (1) to [(8)] (9) of this subsection. The presumption may be
32 rebutted if the court finds that the parents have reached an
33 agreement on all issues related to custody, or if the court
34 finds that a pattern of domestic violence has occurred as
35 set out in subdivision [(6)] (7) of this subsection. When
36 the parties have not reached an agreement on all issues
37 related to custody, the court shall consider all relevant
38 factors and enter written findings of fact and conclusions
39 of law, including, but not limited to, the following:

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

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

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

49 (4) Which parent is more likely to allow the child
50 frequent, continuing and meaningful contact with the other
51 parent and the willingness and ability of parents to
52 cooperate in the rearing of their child, to maximize sharing
53 information and minimize exposure of the child to parental
54 conflict, and to utilize methods for resolving disputes
55 regarding any major decision concerning the life of the
56 child;

62 (6) The mental and physical health of all individuals
63 involved, including **any substance abuse history experienced**
64 **by either parent;**

(7) Any history of abuse of any individuals involved, including domestic and child abuse. In determining whether the presumption is rebutted by a pattern of domestic violence, the court shall consider the nature and context of the domestic violence and the implications of the domestic violence for parenting and for the child's safety, well-being, and developmental needs. 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

80 household member who is the victim of domestic violence from
81 any further harm;

82 **[(7) The intention of either parent to relocate the
83 principal residence of the child; and]**

84 **(8) The [unobstructed input of a child, free of
85 coercion and manipulation, as to the child's custodial
86 arrangement] distance between the residences of the parents
87 seeking custody, including consideration of any relocation
88 which has occurred or an intent to relocate; and**

89 **(9) The unobstructed input of the child, free of
90 coercion and manipulation, as to the child's custodial
91 arrangement, if the court deems the child to be of
92 sufficient ability, age, and maturity to express an
93 independent, reliable preference with due consideration of
94 the influence that a parent may have on the child's input.**

95 3. (1) In any court proceedings relating to custody
96 of a child, the court shall not award custody or
97 unsupervised visitation of a child to a parent if such
98 parent or any person residing with such parent has been
99 found guilty of, or pled guilty to, any of the following
100 offenses when a child was the victim:

101 (a) A felony violation of section 566.030, 566.031,
102 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
103 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
104 566.203, 566.206, 566.209, 566.211, or 566.215;

105 (b) A violation of section 568.020;

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

108 (d) A violation of section 568.065;

109 (e) A violation of section 573.200;

110 (f) A violation of section 573.205; or

111 (g) A violation of section 568.175.

112 (2) For all other violations of offenses in chapters
113 566 and 568 not specifically listed in subdivision (1) of
114 this subsection or for a violation of an offense committed
115 in another state when a child is the victim that would be a
116 violation of chapter 566 or 568 if committed in Missouri,
117 the court may exercise its discretion in awarding custody or
118 visitation of a child to a parent if such parent or any
119 person residing with such parent has been found guilty of,
120 or pled guilty to, any such offense.

121 4. The general assembly finds and declares that it is
122 the public policy of this state that frequent, continuing
123 and meaningful contact with both parents after the parents
124 have separated or dissolved their marriage is in the best
125 interest of the child, except for cases where the court
126 specifically finds that such contact is not in the best
127 interest of the child, and that it is the public policy of
128 this state to encourage parents to participate in decisions
129 affecting the health, education and welfare of their
130 children, and to resolve disputes involving their children
131 amicably through alternative dispute resolution. In order
132 to effectuate these policies, the general assembly
133 encourages the court to enter a temporary parenting plan as
134 early as practicable in a proceeding under this chapter,
135 consistent with the provisions of subsection 2 of this
136 section, and, in so doing, the court shall determine the
137 custody arrangement which will best assure both parents
138 participate in such decisions and have frequent, continuing
139 and meaningful contact with their children so long as it is
140 in the best interests of the child.

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

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

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

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

156 (4) Sole custody to either parent; or

157 (5) Third-party custody or visitation:

158 (a) When the court finds that each parent is unfit,
159 unsuitable, or unable to be a custodian, or the welfare of
160 the child requires, and it is in the best interests of the
161 child, then custody, temporary custody or visitation may be
162 awarded to a person related by consanguinity or affinity to
163 the child. If no person related to the child by
164 consanguinity or affinity is willing to accept custody, then
165 the court may award custody to any other person or persons
166 deemed by the court to be suitable and able to provide an
167 adequate and stable environment for the child. Before the
168 court awards custody, temporary custody or visitation to a
169 third person under this subdivision, the court shall make
170 that person a party to the action;

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

174 6. If the parties have not agreed to a custodial
175 arrangement, or the court determines such arrangement is not

176 in the best interest of the child, the court shall include a
177 written finding in the judgment or order based on the public
178 policy in subsection 4 of this section and each of the
179 factors listed in subdivisions (1) to [(8)] (9) of
180 subsection 2 of this section detailing the specific relevant
181 factors that made a particular arrangement in the best
182 interest of the child. If a proposed custodial arrangement
183 is rejected by the court, the court shall include a written
184 finding in the judgment or order detailing the specific
185 relevant factors resulting in the rejection of such
186 arrangement.

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

196 8. As between the parents of a child, no preference
197 may be given to either parent in the awarding of custody
198 because of that parent's age, sex, or financial status, nor
199 because of the age or sex of the child. The court shall not
200 presume that a parent, solely because of his or her sex, is
201 more qualified than the other parent to act as a joint or
202 sole legal or physical custodian for the child.

203 9. Any judgment providing for custody shall include a
204 specific written parenting plan setting forth the terms of
205 such parenting plan arrangements specified in subsection 8
206 of section 452.310. Such plan may be a parenting plan
207 submitted by the parties pursuant to section 452.310 or, in

208 the absence thereof, a plan determined by the court, but in
209 all cases, the custody plan approved and ordered by the
210 court shall be in the court's discretion and shall be in the
211 best interest of the child.

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

228 11. No court shall adopt any local rule, form, or
229 practice requiring a standardized or default parenting plan
230 for interim, temporary, or permanent orders or judgments.
231 Notwithstanding any other provision of law to the contrary,
232 a court may enter an interim order in a proceeding under
233 this chapter, provided that the interim order shall not
234 contain any provisions about child custody or a parenting
235 schedule or plan without first providing the parties with
236 notice and a hearing, unless the parties otherwise agree.

237 12. Unless a parent has been denied custody rights
238 pursuant to this section or visitation rights under section
239 452.400, both parents shall have access to records and

240 information pertaining to a minor child including, but not
241 limited to, medical, dental, and school records. If the
242 parent without custody has been granted restricted or
243 supervised visitation because the court has found that the
244 parent with custody or any child has been the victim of
245 domestic violence, as defined in section 455.010, by the
246 parent without custody, the court may order that the reports
247 and records made available pursuant to this subsection not
248 include the address of the parent with custody or the
249 child. A court shall order that the reports and records
250 made available under this subsection not include the address
251 of the parent with custody if the parent with custody is a
252 participant in the address confidentiality program under
253 section 589.663. Unless a parent has been denied custody
254 rights pursuant to this section or visitation rights under
255 section 452.400, any judgment of dissolution or other
256 applicable court order shall specifically allow both parents
257 access to such records and reports.

258 13. Except as otherwise precluded by state or federal
259 law, if any individual, professional, public or private
260 institution or organization denies access or fails to
261 provide or disclose any and all records and information,
262 including, but not limited to, past and present dental,
263 medical and school records pertaining to a minor child, to
264 either parent upon the written request of such parent, the
265 court shall, upon its finding that the individual,
266 professional, public or private institution or organization
267 denied such request without good cause, order that party to
268 comply immediately with such request and to pay to the
269 prevailing party all costs incurred, including, but not
270 limited to, attorney's fees and court costs associated with
271 obtaining the requested information.

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

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

✓