

FIRST REGULAR SESSION

HOUSE BILL NO. 903

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (120) (Sponsor) AND SKAGGS (Co-sponsor).

Read 1st time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2078L.011

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Section A. Section 452.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.375, to read as follows: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, 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. The court shall consider all relevant factors including:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

35 (8) The wishes of a child as to the child's custodian.

36

37 The fact that a parent sends his or her child or children to a home school, as defined in section
38 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such
39 child or children.

40 3. In any court proceedings relating to custody of a child, the court shall not award
41 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
42 such parent has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo,
43 except for section 566.034, RSMo, when a child was the victim, or a violation of section
44 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for
45 subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an
46 offense committed in another state when a child is the victim, that would be a felony violation
47 of chapter 566, RSMo, except for section 566.034, RSMo, or section 568.020, 568.045, 568.060,
48 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection
49 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this
50 subsection shall preclude the court from exercising its discretion regarding the awarding of

51 custody or visitation for a child if the parent or any person residing in the home has been found
52 guilty of or pled guilty or nolo contendere to any offense excepted or excluded in this subsection.

53 4. The general assembly finds and declares that it is the public policy of this state that
54 frequent, continuing and meaningful contact with both parents after the parents have separated
55 or dissolved their marriage is in the best interest of the child, except for cases where the court
56 specifically finds that such contact is not in the best interest of the child, and that it is the public
57 policy of this state to encourage parents to participate in decisions affecting the health, education
58 and welfare of their children, and to resolve disputes involving their children amicably through
59 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
60 custody arrangement which will best assure both parents participate in such decisions and have
61 frequent, continuing and meaningful contact with their children so long as it is in the best
62 interests of the child.

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

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

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

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

73 (4) Sole custody to either parent; or

74 (5) Third-party custody or visitation:

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

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

83 6. If the parties have not agreed to a custodial arrangement, or the court determines such
84 arrangement is not in the best interest of the child, the court shall include a written finding in the
85 judgment or order based on the public policy in subsection 4 of this section and each of the
86 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific

87 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
88 custodial arrangement is rejected by the court, the court shall include a written finding in the
89 judgment or order detailing the specific relevant factors resulting in the rejection of such
90 arrangement. **If the court grants sole custody to a parent under this section, the court shall**
91 **make a written finding citing clear and convincing evidence based on the factors listed in**
92 **subsection 2 of this section that joint custody is unreasonable and not in the best interest**
93 **of the child to the extent that the legal custodial relationship between the child and the**
94 **other parent should be severed.**

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

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

104 9. Any judgment providing for custody shall include a specific written parenting plan
105 setting forth the terms of such parenting plan arrangements specified in subsection 7 of section
106 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
107 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
108 approved and ordered by the court shall be in the court's discretion and shall be in the best
109 interest of the child.

110 10. Unless a parent has been denied custody rights pursuant to this section or visitation
111 rights under section 452.400, both parents shall have access to records and information
112 pertaining to a minor child, including, but not limited to, medical, dental, and school records.
113 If the parent without custody has been granted restricted or supervised visitation because the
114 court has found that the parent with custody or any child has been the victim of domestic
115 violence, as defined in section 455.200, RSMo, by the parent without custody, the court may
116 order that the reports and records made available pursuant to this subsection not include the
117 address of the parent with custody or the child. Unless a parent has been denied custody rights
118 pursuant to this section or visitation rights under section 452.400, any judgment of dissolution
119 or other applicable court order shall specifically allow both parents access to such records and
120 reports.

121 11. Except as otherwise precluded by state or federal law, if any individual, professional,
122 public or private institution or organization denies access or fails to provide or disclose any and

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

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

133 13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and
134 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the
135 custody or visitation arrangement ordered by the court best protects the child and the parent or
136 other family or household member who is the victim of domestic violence or abuse, as defined
137 in sections 455.010 and 455.501, RSMo, and any other children for whom such parent has
138 custodial or visitation rights from any further harm.